TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 531

JOHN BOSEMAN, PETITIONER,

vs.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 16, 1936.

CERTIORARI GRANTED DECEMBER 21, 1936.

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IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. .....

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, APPELLANT,

VS.

JOHN BOSEMAN, APPELLEE.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

Caption.

Be it remembered that at a regular term of the District Court of the United States for the Eastern District of Texas, in the Fifth Circuit, begun and holden at Beaumont, Texas, on the 22nd day of October, A. D. 1934, the Honorable Randolph Bryant, United

States District Judge for the Eastern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

Style of Cause:

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Original Petition of Plaintiff.

In the District Court of Jefferson County, Texas.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

To the Honorable Judge of Said Court:

Comes now John Boseman, hereinafter called plaintiff, complaining of Connecticut General Life Insurance Company, hereinafter called defendant, and for cause of action respectfully represents:

1.

That plaintiff resides in Jefferson County, Texas, and that the defendant, Connecticut General Life Insurance Company, is and was at all times material hereto an insurance corporation or an association in-

corporated in and existing under the laws of the State of Connecticut, authorized and permitted to do and actually carrying on an insurance business in the State of Texas, and having no designated agent for service in this state within the knowledge of plaintiff, service of citation herein may be had by serving the Commissioner of Insurance for the State of Texas, or any member of the Board of Insurance Commissioners of the State of Texas, at Austin, Travis County, Texas.

2.

Plaintiff represents that on or about April 1, 1932, the defendant, Connecticut General Life Insurance Company, for and in consideration of the payment to it of the usual and customary premium therefor, issued and delivered to the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies, the Gulf Refining Company of Port Arthur, Jefferson County, Texas, being one of such companies, a policy of group insurance in writing, same being numbered G-5039-R, bearing the following endorsement: "Co-operative Policy; One Year Renewable Term, Non-Participating; Conversion Option; Permanent Total Disability; Experience Rating Plan; Table of Rates Guaranteed Against Increase for One Year. Policy No. G-5039-R, Connecticut General Life Insurance Company, Hartford, Conn.; Co-operative Life Insurance Policy Issued to Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated Companies of Pittsburgh, Pennsylvania; Date, April 1, 1932;" by the terms

of such group policy defendant insured certain employees of the said companies against death or permanent total disability occurring before age sixty.

The above referred to group policy contains, among other provisions, the following:

> Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy, but will show the insurance protection to which the employee is entitled, to whom payable, and the conversion privilege.
>
> Continuity of Service, provided Payments are made by Employees, as due:
>
> If any employee leaves the Employer's service except for temporary lay-off on account of lack of work and enters the service of any other corporation, firm or individual even temporarily, his employment shall thereupon terminate.
>
> If any employee is temporarily laid off on account of lack of work and his insurance is cancelled, his insurance may be reinstated upon his return to active service and his employment record will be considered continuous from the original employment date, notwithstanding the fact that he may have been working in the meantime.
>
> In the case of any employee absent from duty due to ill health, or other disabling cause, and not employed elsewhere during such absence, he shall

be considered as continuing in the Employer's service unless and until the Employer informs the Company that his employment has terminated.

3.

Plaintiff alleges that said policy of insurance was by defendant executed, issued and delivered to the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies and to the Gulf Refining Company of Port Arthur, Jefferson County, Texas, and that the same is not now and never has been in the possession of this plaintiff, but that all the conditions, stipulations and provisions are well known to the defendant, and plaintiff alleges, upon information and belief, that defendant has in its possession the original of said policy or a true copy thereof, and plaintiff hereby notifies the said defendant to produce same in court upon a trial of this cause, or a true copy thereof, and in the event the original of said policy, or a true copy thereof, is not produced, plaintiff will offer secondary evidence of same.

Plaintiff asserts in this connection that in the event that such group policy, numbered and described as above, is not produced in compliance with the foregoing notice so to do, he alleges that the individual certificate, hereinafter described, issued him by the defendant, contains the complete contract of insurance between himself and defendant, Connecticut General Life Insurance Company.

4.

That the said Gulf Refining Company of Port Arthur, Jefferson County, Texas, is and was at all times material hereto a subsidiary company of and/or an affiliated company with the said Gulf Oil Corporation of Pennsylvania, and that the said Group Policy G-5039-R insured employees of the said Gulf Refining Company, and that the plaintiff herein was an employee of the said Gulf Refining Company and was insured under Policy No. G-5039-R, above referred to, by the issuance to him of Certificate No. R23558.

5.

That subject to the terms and conditions of said policy, above referred to, defendant in consideration of his payment of premiums therefor, executed, issued and delivered to this plaintiff its Certificate of Insurance No. R23558, made effective as of April 1, 1932, said certificate bearing the following endorsement thereon, "The Connecticut General Life Insurance Company of Hartford, Connecticut, Co-operative Group Life Insurance Issued to the Gulf Oil Corporation of Pennsylvania for the benefit of the employees of Itself and its Subsidiaries, Certificate No. R23558, issued under and subject to the terms and conditions of Policy No. G-5039-R to John Boseman;" said certificate being in the principal sum of Four Thousand ($4,000.00) Dollars, payable in the event of death to the beneficiary named therein, or in the event of his

total and permanent disability, occurring before age sixty, to the insured plaintiff himself, such payments of benefit in any or either event to be made in a lump sum, wherein and whereby plaintiff was fully insured and protected under such group policy of insurance and certificate issued thereunder in the amount above specified, as more fully set out hereinafter.

Such certificate so issued this plaintiff contains provisions taken from the said group policy, and among others, the following:

> The Connecticut General Life Insurance Company of Hartford, Connecticut, certifies that it has issued a policy of Co-operative Group Life Insurance to Gulf Oil Corporation of Pennsylvania and/or Subsidiary and/or Affiliated Companies and subject to the terms and conditions of said policy numbered G-5039-R, executed and delivered in the Commonwealth of Pennsylvania, John Boseman, an employee, is insured under Schedule B of said policy for the sum of Four Thousand Dollars, subject to increase as provided on page two hereof, payable in case of death in accordance with attached beneficiary rider, or in case of permanent total disability, occurring before age sixty, to the insured.
>
> Schedule B.
>
> The following table applies to each employee who is insured under Schedule B, and shows the total amount of insurance in force on such em-

ployee according to salary class at the completion of the respective periods of continuous service.

The salary class of each employee is determined initially by monthly salary which is in effect on the date the insurance on such employee becomes effective as follows:

Salary class 1-B—Employees receiving salary of less than $150.00 per month.

Salary class 2-B—Employees receiving salary of $150 or over but less than $250 per month.

Salary class 3-B—Employers receiving salary of $250 or over but less than $450 per month.

Salary class 4-B—Employees receiving salary of $450 or over but less than $650 per month.

Salary class 5-B—Employees receiving salary of $650 or over per month.

Completed Years of Continuous Service		Salary Class 1-B	Salary Class 2-B	Salary Class 3-B	Salary Class 4-B	Salary Class 5-B
1	Amount of insurance	$2,000	$3,000	$5,500	$9,500	$13,500
2	Amount of insurance	2,250	3,250	5,750	9,750	13,750
3	Amount of insurance	2,500	3,500	6,000	10,000	14,000
4	Amount of insurance	2,750	3,750	6,250	10,250	14,250
5	Amount of insurance	3,500	5,000	9,500	14,500	19,500
6	Amount of insurance	3,750	5,250	9,750	14,750	19,750
7 or more	Amount of insurance	4,000	5,500	10,000	15,000	20,000

Total disability: Any employee shall be deemed totally disabled within the meaning of policy G-5039-R if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation.

Permanent Total Disability: If said total disability began before age sixty, and presumably during the life of such employee, shall be deemed permanently and totally disabled within the meaning of policy G-5039-R.

The amount of insurance payable in the event of permanent total disability shall be the amount due at the time such disability began.

Benefits: Immediately upon receipt of proof satisfactory to the Company that any insured person has become permanently totally disabled, as defined above, the Company will, in lieu of all other benefits and options provided in policy G-5039-R, pay to the insured employee the amount of insurance in force on the life of such employee hereunder.

And in this connection plaintiff represents that the defendant is fully apprised of and is familiar with all the terms and conditions contained both in the said group policy and the certificate issued him under such group policy.

Plaintiff, John Boseman, alleges that Certificate No. R23558, issued him by Connecticut General Life Insurance Company under Policy G-5039-R, was delivered to him in Jefferson County, Texas, by the Gulf Refining Company, and that he executed an order authorizing his employer, the Gulf Refining Company, of Jefferson County, Texas, to deduct the premiums for his insurance in advance from his wages, and that

such authorization was executed by him to his said employer in Jefferson County, Texas.

6.

Plaintiff, John Boseman, represents unto the court that at the time of the execution and delivery to him of the certificate under said group policy of insurance, above referred to, that he was employed by and in the employ of the Gulf Refining Company in Jefferson County, Texas, the said Gulf Refining Company being one of the companies to whom the Group Policy G-5039-R was issued by the Connecticut General Life Insurance Company, and that the said Certificate No. R23558 was issued to him as an employee of Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies, and that same was issued to him under the said Group Policy G-5039-R, thereby insuring the said John Boseman against death and permanent total disability. That plaintiff immediately began paying his premiums for such insurance to defendant through his employer, the Gulf Refining Company, and that such premiums were deducted from his wages regularly, and that he continued making such premium contributions during his employment with the said Gulf Refining Company and that all the payments of himself and his employer have been duly paid and discharged, and that the said group policy and the individual certificate issued him thereunder insured and protected him at the time of his total permanent disability hereinafter alleged.

7.

Plaintiff alleges that while in the employment of the said Gulf Refining Company he sustained an injury to his left eye, that he has suffered a material loss of vision therein and the same is the cause of constant pain and discomfort to him; that he sustained a severe injury to his back and left side of his chest, and that he is unable to exert himself in any manner without suffering pain in his lower back and left side, and he further alleges that he was operated on for a hernia on the left side and that a hernia on the right side appeared thereafter, that he suffers pain in the abdomen and inguinal region, that he is unable to stoop over or to do any straining, lifting or any heavy work, that he was and is suffering from diabetes, chronic bronchitis and syphilis, that he suffers constant pain in the chest and lungs and from difficult breathing and shortness of breath, that he has lost weight and his entire physique has been materially weakened and his health undermined, all of which disabilities have rendered him totally disabled, and that such total disability is permanent and he is prevented thereby from pursuing any occupation for wages or profit. He alleges that his permanent total disability began before he attained the age sixty and while he was insured with defendant, Connecticut General Life Insurance Company.

Plaintiff alleges that he was born March 18, 1892, at New Iberia, Louisiana.

8.

Plaintiff alleges that in accordance with the terms and provisions of the group policy and his certificate and in accordance with the statutes of the State of Texas with respect thereto, he gave notice of his total and permanent disability and submitted proof thereof to defendant upon blanks furnished him by the defendant for such purpose. He further alleges that he made demand of defendant for payment of the total and permanent disability benefits under the said group policy and his certificate and that such demand for payment of total and permanent disability benefits was made more than thirty days prior to the filing of this suit, and he alleges that in the event such demand for payment and the proof submitted to defendant were not made in strict accordance with the terms of such group policy and certificate, that the defendant received the same, both the proof as submitted, and the demand for payment of the total and permanent disability benefits knowing that it was an attempt upon the part of this defendant to comply with the terms of this group policy and certificate, and by such acceptance thereof waived any other or further or different proof and demand, and plaintiff hereby notifies the defendant to produce such proof as submitted by him and the written demand for payment as made by him, upon a trial of this cause, and in the event the same are not produced, secondary evidence thereof shall be offered. That defendant, Connecticut General Life Insurance Company, has failed

and refused and still fails and refuses to pay plaintiff the amount of total and permanent disability benefits to which he is entitled under the said group policy and the certificate issued him under such group policy.

9.

By reason of the premises above set forth, defendant, Connecticut General Life Insurance Company, became bound and liable to pay plaintiff under Group Policy G-5039-R and Certificate No. R23558, the sum of Four Thousand ($4,000.00) Dollars, with interest thereon at the rate of six per cent per annum from the date proof was received by defendant.

10.

The said plaintiff further represents that he has complied with each and all of the requirements, conditions and provisions of said contract of group insurance and the certificate issued him thereunder, and after having done so, made proper legal demand upon defendant for payment in accordance with its said contract, and the defendant, having failed and refused to pay the same within thirty days after such demand being made therefor, became bound and obligated itself to pay plaintiff, in addition to the principal amount of said certificate, the sum of 12% damages, in addition thereto, together with reasonable attorneys' fees for the collection of said sums, as provided by law, and the plaintiff shows the court that it was necessary to secure the services of attorneys for the collection thereof, and

he shows that the necessary and reasonable attorneys' fees for the collection of such amounts is the sum of One Thousand ($1,000.00) Dollars, and that plaintiff has employed for such purposes the law firm of Howell & Howell, of Jefferson County, Texas, a partnership composed of G. L. and Leon P. Howell, and has contracted to pay them such reasonable attorneys' fees, and by reason of the facts herein stated defendant is further obligated to pay the said sum of One Thousand ($1,000.00) Dollars for and as reasonable attorneys' fees.

In this connection, plaintiff, John Boseman, alleges that upon his completion of the required period of service in the employment of the Gulf Refining Company which made him eligible, as prescribed in Group Policy G-5039-R, for insurance with Connecticut General Life Insurance Company in the amount of Four Thousand ($4,000.00) Dollars, he thereupon applied for such insurance through the Gulf Refining Company, and he alleges that he executed an order, in compliance with said group policy, authorizing the Gulf Refining Company to deduct the premiums therefor in advance from his wages. Plaintiff further alleges that such authorization was made by him in Jefferson County, Texas, and in conformity therewith and at the request of the said Gulf Refining Company, the Connecticut General Life Insurance Company issued the said John Boseman Certificate No. R23558 in the amount of Four Thousand ($4,000.00) Dollars and that such individual certificate issued him as aforesaid by the Connecticut General Life Insurance Company was delivered to

plaintiff in Jefferson County, Texas, by his employer, the said Gulf Refining Company, thereby completing the group insurance contract in Jefferson County, Texas. Plaintiff alleges that pursuant to such authorization, the Gulf Refining Company deducted the premiums for his insurance in advance from his wages and that such deductions were made by the said Gulf Refining Company in Jefferson County, Texas. The said John Boseman represents that all his dealings and negotiations with the Connecticut General Life Insurance Company in the matter of his insurance were made in Jefferson County, Texas, and that the same were made through the Gulf Refining Company and that the said Connecticut General Life Insurance Company was at all times material hereto, authorized to pursue the business of life, health and accident insurance in the State of Texas, and that the Gulf Refining Company of Port Arthur, Jefferson County, Texas, was the agent of Connecticut General Life Insurance Company; that the said Gulf Refining Company took plaintiff's application for insurance with the Connecticut General Life Insurance Company under Group Policy G-5039-R, as heretofore shown, that the said Gulf Refining Company had plaintiff execute the authorization for the payment of premiums in compliance with the said group policy, that the said Gulf Refining Company requested the Connecticut General Life Insurance Company to issue plaintiff the individual certificate and that upon the issuance of such certificate the said Gulf Refining Company delivered the same

to plaintiff in Jefferson County, Texas. Petitioner further alleges that the said Gulf Refining Company collected premiums on his insurance with the said Connecticut General Life Insurance Company and that the said Gulf Refining Company was engaged in the business of soliciting insurance, procuring certificates of insurance, presenting and delivering certificates of insurance, completing contracts of insurance and collecting premiums thereon in the State of Texas, and more particularly in the case of this plaintiff at Port Arthur, Jefferson County, Texas, and in all respects insofar as the necessity for completing the contract of group insurance under which the individual certificate was issued plaintiff, the said Gulf Refining Company was an agent of the Connecticut General Life Insurance Company.

Wherefore, plaintiff prays that the defendant, Connecticut General Life Insurance Company, be duly cited to answer this petition by serving such citation, together with a certified copy of this petition, upon the Commissioner of Insurance for the State of Texas or any member of the Board of Insurance Commissioners, at Austin, Travis County, Texas, and he prays that upon a final trial hereof he have judgment against the defendant for the principal amount of Four Thousand ($4,000.00) Dollars, with interest thereon at the rate of six per cent per annum from the date proof was received by defendant, and for twelve per cent of the said principal amount with interest as damages for failure to pay within the time provided by law, and the further sum of One Thousand ($1,000.00) Dollars

for and as reasonable attorneys' fees, for all costs of suit, and for such other and further relief, both general and special, at law and in equity, to which the plaintiff may be entitled.

HOWELL & HOWELL,
Attorneys for Plaintiff.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Co. In the District Court of Jefferson County, Texas. Plaintiff's Original Petition. Filed April 20th, 1934. R. E. Cowan, Clerk District Court of Jefferson County, Texas. W. J. Bergman, Deputy.

Endorsed:

At Law 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court in and for the Eastern District of Texas, Beaumont Division. By Susie Kerr, Deputy.

Petition for Removal by Connecticut General Life Insurance Company.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226

John Boseman,

vs.

Connecticut General Life Insurance Company.

Petition for Removal of Cause to the United States District Court for the Eastern District of Texas, Beaumont Division, Sitting at Beaumont, Jefferson County, Texas.

Comes now Connecticut General Life Insurance Company, of Hartford, Connecticut, a private corpora-

tion, duly incorporated under and by virtue of the laws of the State of Connecticut, with its principal place of business in Hartford, Hartford County, Connecticut and a resident and citizen of the State of Connecticut, and domiciled in such state (said Company being named as defendant in this cause) and appearing specially herein for the sole purpose of presenting this its petition for removal of this cause to the United States District Court for the Eastern District of Texas, Beaumont Division, sitting at Beaumont, Jefferson County, Texas, respectfully shows, in support of its petition, the following:

1.

The above entitled and numbered suit has been brought in this court and is now pending herein.

2.

That said action is of a civil nature at law and the matter and amount in dispute exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, as is further shown by plaintiff's petition filed herein.

3.

That the controversy in said suit now is, and at the time of the commencement of this suit was, between citizens of different states; and that your petitioner, Connecticut General Life Insurance Company of Hartford, Connecticut, the defendant in the above entitled and numbered suit, was at the time of the commence-

ment of said suit in this county, and still is a resident of and a citizen of the State of Connecticut, with its principal place of business in the County of Hartford, and a non-resident of the State of Texas, and that the plaintiff, John Boseman, was at the commencement of this suit, and still is, a resident and citizen of the County of Jefferson, State of Texas.

4.

That said action is one of which the District Courts of the United States are given original jurisdiction in that the original petition filed by plaintiff, John Boseman, requests a sum in excess of Three Thousand ($3,000.00) Dollars; and that this is a controversy between citizens of different states, to-wit: John Boseman, a citizen of the State of Texas, and Connecticut General Life Insurance Company, of Hartford, Connecticut, a citizen of the State of Connecticut.

5.

The time within which your petitioner is required by the laws of the State of Texas and the rules of this court to answer or plead to the original petition, the only pleadings filed by plaintiff, John Boseman, in the above entitled and numbered cause, has not as yet expired.

6.

Your petitioner presents herewith a bond heretofore filed with the clerk of this court, with good and sufficient surety, conditioned that it will enter in the

District Court of the United States for the Eastern District of Texas, Beaumont Division, same being the division of such district to which suits in this county are returnable, within thirty (30) days from the date of the filing of this petition, a certified copy of the record in this suit, and of all proceedings in this court in this suit, and further conditioned that it will pay all costs that may be awarded by the said District Court of the United States for the Eastern District of Texas, Beaumont Division, against it in case the said court shall hold this suit was wrongfully or improperly removed thereto.

7.

Prior to the filing of this petition, and prior to the filing of said bond, hereinbefore described, for the removal of this cause, written notice of its intention to file the same was given by petitioner to the plaintiff as required by law, and a true copy of same with proof of service of same is attached hereto.

8.

The petitioner in presenting this petition makes a special appearance in this court for the sole and exclusive purpose of presenting this its petition for removal of said cause to the United States District Court, and in presenting same petitioner expressly reserves its right to contest and object to form and service of process made in this cause, and does here and now allege that same is insufficient under the laws of the

State of Texas, and under the laws of the United States, to require this defendant to appear and answer in this court, or the Federal District Court of the United States of the Eastern District of Texas, Beaumont Division.

9.

This petition and the affidavit hereto are made by the Connecticut General Life Insurance Company of Hartford, Connecticut, defendant herein, duly acting by and through its attorney of record, Major T. Bell, a resident and citizen and duly licensed lawyer of the State of Texas, who resides in Beaumont, Jefferson County, Texas, and who is duly authorized by and on behalf of said Connecticut General Life Insurance Company of Hartford, Connecticut, to make, execute and present this its petition for removal and the affidavit thereto.

Wherefore, your petitioner prays that this court proceed no further herein, except to make an order of removal as required by law and to accept said surety and bond and approve said bond and order and cause the record herein to be removed to the District Court of the United States within and for the Beaumont Division of the Eastern District of Texas, according to the statute in such cases made and provided.

Dated this the 28th day of May, A. D., 1934.

MAJOR T. BELL,
Attorney for Petitioner.

The State of Texas, County of Jefferson.

Major T. Bell, being duly sworn, states that he is the attorney of record for the petitioner, Connecticut General Life Insurance Company of Hartford, Connecticut, and that he is duly authorized by said petitioner to make, execute and present this petition and affidavit in its behalf and that he, Major T. Bell, does so present same, acting under such authority and authorization; and that he has read the foregoing petition and that same is true and correct of his own knowledge.

Major T. Bell.

Sworn to and subscribed before me, the undersigned authority, by Major T. Bell, well known to me, in Beaumont, Jefferson County, Texas, on this the 28th day of May, A. D., 1934.

O. R. Gross,
Notary Public in and for
Jefferson County, Texas.

(Seal)

Endorsed: No. 43226. In the 58th District Court of Jefferson County, Texas. John Boseman vs. Connecticut General Life Insurance Company. Petition for Removal. Filed May 26, 1934. R. E. Cowan, Clerk District Court, Jefferson County, Texas. By L. A. Baker, Deputy.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Notice of Intention to Remove and Service Thereof.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

To John Boseman, Plaintiff, or Messrs. Howell & Howell, His Attorneys of Record:

Please take notice that the Connecticut General Life Insurance Company, defendant in the above entitled and numbered cause, will at or before 9 A. M. on the 28th day of May, A. D., 1934, file in the clerk's office of the District Court of Jefferson County, Texas, in which said suit is now pending, its petition and its bond for removal of said cause from the said District Court of Jefferson County, Texas, to the District Court of the United States in and for the Eastern District of Texas, Beaumont Division; and upon filing of said petition and bond, the defendant will present and call to the attention of the District Court of Jefferson County, Texas, 58th Judicial District, the said petition and bond and move said District Court of Jefferson County, Texas, at ten o'clock A. M., on May 28, 1934, or as soon thereafter as the business of the court will permit, for an order of removal of said action and suit to the District Court of the United States in and for

the Eastern District of Texas, Beaumont Division. The said motion for removal is upon the grounds stated in said petition. At which time and place you may be present if you so elect.

Copies of said petition and bond are served herewith.

Dated this the 21st day of May, A. D., 1934.

MAJOR T. BELL,
Attorney for Petitioner,
404 Gilbert Building.
Beaumont, Texas.

The foregoing notice, together with copies of the petition and bond for removal were served upon and accepted by us, attorneys for plaintiff, on this the 25th day of May, A. D., 1934.

HOWELL & HOWELL,
Attorneys for Plaintiff.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Company. Notice of Removal. Filed May 28, 1934. R. E. Cowan, Clerk District Court of Jefferson County, Texas. By L. A. Baker, Deputy.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Removal Bond and Approval Thereof.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Know all men by these presents: That we, Connecticut General Life Insurance Company, a private corporation duly incorporated under and by virtue of the laws of the State of Connecticut, having its principal place of business in Hartford, Hartford County, Connecticut, as principal, and Hartford Accident & Indemnity Company, a private corporation incorporated under and by virtue of the laws of the State of Connecticut, with its principal place of business in Hartford, Hartford County, Connecticut, and duly licensed by the State of Texas to execute bonds of this character as surety in said State, as surety, are held and firmly bound unto John Boseman, plaintiff in the above entitled and numbered cause, his heirs, executors, administrators and assigns, in the penal sum of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we and each of us bind ourselves, our successors, receivers and assigns, jointly and severally, by these presents.

The conditions of this obligation are that: whereas the said Connecticut General Life Insurance Company has applied by petition to the District Court of Jefferson County, State of Texas, 58th Judicial District, for the removal of the above entitled cause, from the said District Court of Jefferson County, State of Texas, 58th Judicial District, to the District Court of the United States for the Eastern District of Texas, Beaumont Division;

Now, therefore, if the said Connecticut General Life Insurance Company shall enter in the said District Court of the United States for the Eastern District of Texas, Beaumont Division, within thirty (30) days from the date of filing of its petition for such removal a certified copy of the record in said suit, and shall well and truly pay all of the costs that may be awarded by said Federal District Court if it shall hold that said suit was wrongfully and improperly removed thereto, then this obligation will be void; otherwise it will remain in full force and effect.

Signed and executed in Hartford, Hartford County, Connecticut, this the 11th day of May, A. D. 1934.

Connecticut General Life Insurance Company, Principal.
By R. K. Metcalf,
Hartford Accident & Indemnity Company, Surety.
By E. H. Chevey,
Its Attorney in Fact.

Approved and accepted this the 28th day of May, A. D. 1934.

GEO. C. O'BRIEN,
Judge of the District Court of Jefferson County, Texas, 58th Judicial District.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Company. Bond for Removal. Filed May 28, 1934. R. E. Cowan, Clerk District Court of Jefferson County, Texas. By L. A. Baker, Deputy.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Order of Removal.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

On this the 28th day of May, A. D. 1934, came on for hearing upon petition of Connecticut General Life Insurance Company, the defendant in the above entitled and numbered cause, for an order removing this cause to the District Court of the United States for the Eastern District of Texas, Beaumont Division, and it ap-

pearing to the court that the defendant has filed its petition and bond for such removal in due form within the time required, and it being further shown to the court that the notice required by law of the filing of said bond and petition had prior to the filing thereof been served upon the plaintiff herein, which notice the court finds is sufficient and in accordance with the requirements of the statutes; and it appearing to the court that this is a proper cause for removal to the said District Court of the United States for the Eastern District of Texas, Beaumont Division, the court does hereby and now accept and approve said bond and does order this cause to be removed to the District Court of the United States for the Eastern District of Texas, Beaumont Division, sitting at Beaumont, Jefferson County, Texas; and that all other proceedings of this court be stayed; and the clerk is hereby directed to make up the record in said cause for transmission to said court forthwith.

GEO. C. O'BRIEN,
Judge Presiding.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Company. Order of Removal. Recorded Vol. 20, page 179 Civil Minutes District Court of Jefferson County, Texas.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Plaintiff's Trial Amendment to Original Petition.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

No. 1468 *at Law.*

John Boseman,

VS.

Connecticut General Life Insurance Company.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the plaintiff, John Boseman, and after leave of court first being had and obtained, files this his Trial Amendment:

In connection with Paragraph 7 of plaintiff's Original Petition it is alleged that such permanent total disability commenced and accrued on and prior to the 8th day of October, 1932, or in the alternative, such permanent total disability commenced and accrued on and prior to the 30th day of March, 1933, but that in either event such permanent total disability commenced, accrued and was consummated while plaintiff's insurance with the defendant, Connecticut General Life Insurance Company, was in full force and effect under Policy G-5039-R and the certificate issued to the plaintiff thereunder.

Wherefore, premises considered, plaintiff prays for the same relief heretofore prayed for in his Original Petition, and for such other and further relief as he may be justly entitled.

HOWELL & HOWELL,
Attorneys for Plaintiff.

Endorsed:

No. 1468 at Law. In the District Court of the United States in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Co. Trial Amendment. Filed November 12th, 1934. F. A. King, Clerk U. S. District Court.

Defendant's Second Amended Original Answer.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Now comes the defendant, Connecticut General Life Insurance Company, in the above styled and numbered cause, with leave of court first being had and obtained, and files this, its Second Amended Original Answer, in lieu of its First Amended Original Answer heretofore filed herein, and in answer to Plaintiff's Petition filed herein says:

1.

Defendant demurs and excepts generally to Plaintiff's Petition filed herein and says that the matters and things therein contained, in the manner and form as therein set forth, are insufficient in law for him to maintain his cause of action; and of this defendant prays judgment of the court.

2.

Subject to the foregoing, defendant specially excepts to Paragraph 5 of Plaintiff's Petition on file herein, for the reason that the allegations therein contained are vague, indefinite, and general, and do not set forth any specific date upon which plaintiff became totally and permanently disabled.

3.

Subject to the foregoing, defendant specially excepts to the allegations contained in the Second Paragraph of Section 10 of Plaintiff's Petition on file herein, wherein plaintiff alleges that the Gulf Refining Company was engaged in the business of soliciting insurance, etc., for the reason that said allegations are mere conclusions of the pleader and no fact or facts are alleged, showing an engagement in the insurance business by the Gulf Refining Company.

4.

Subject to the foregoing, defendant further specially excepts to the allegations contained in the Second Paragraph of Section 10 of Plaintiff's Petition on file herein, for the reason that said allegations are vague, general and indefinite and no allegations of fact are made, showing the type or character of the agency alleged to exist, nor the authority, if any, of said agent.

5.

Now comes the defendant, Connecticut General Life Insurance Company, in the above styled and numbered

cause, and denies each and every allegation in the Plaintiff's Petition contained and says that the same is not true and demands strict proof thereof; and of this it puts itself upon the Country.

6.

Further answering herein, this defendant specially denies that the plaintiff, John Boseman, was at any time while he was insured under the contract of insurance in question totally and permanently disabled, within the meaning of said term, as defined in said policy, but on the contrary defendant says that the said plaintiff was not disabled, but at all times material hereto, up to and including October 7th, 1932, was able to perform the kind and character of manual labor which he had been doing for years prior to the termination of his employment with the Gulf Refining Company.

7.

Subject to the foregoing, this defendant says that plaintiff's employment was terminated on October 7th, 1932; that Policy G-5039-R contained the following provision:

"No claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice for such disability to the company during the said period of employment or within sixty (60) days thereafter."

That Policy G-5039-R further specifically provided that the "company" should designate the Connecticut General Life Insurance Company; that the plaintiff herein did not give notice to this defendant of any claim of any character under Policy G-5039-R during the period of his employment within sixty (60) days after the termination of such; that for this additional reason the plaintiff is not entitled to recover any amount in this suit.

8.

Further answering herein, this defendant says that it is entitled to have this policy and all conditions thereof interpreted under and by virtue of the laws of the State of Pennsylvania or the State of Connecticut, and not in the State of Texas; that Policy G-5039-R was issued upon an application made by the Gulf Oil Corporation of Pennsylvania from its Pittsburgh, Pennsylvania, office and directed to the Connecticut General Life Insurance Company at Hartford, Connecticut; that said application was signed in Pittsburgh, Pennsylvania, and specifically requested that the policy be issued in Pittsburgh and the Commonwealth of Pennsylvania, and that it be governed by the laws of that Commonwealth; that said application was forwarded to the Hartford, Connecticut, office of this defendant and acting upon said application, this defendant did upon April 1st, 1932, sign and issue, at its Hartford, Connecticut, office said Policy G-5039-R; that said Master Policy so numbered was thereafter de-

livered to the Gulf Oil Corporation in the State of Pennsylvania at Pittsburgh; that all negotiations for Policy G-5039-R, leading to the execution of said contract, as well as all acts in executing said contract, took place either in the State of Pennsylvania or the State of Connecticut, and no part of same took place in the State of Texas, or any other state than those two named; that the Gulf Oil Corporation of Pittsburgh, Pennsylvania, handles all transactions in reference to said policy from its Pittsburgh, Pennsylvania, office with this defendant at its Hartford, Connecticut, office; that all certificates issued under said policy were and are issued in Hartford, Connecticut, and at the time of the issuance of such, this defendant does not know where the employee in whose name they were or are issued, was or is then located or residing; that such certificates are thereafter delivered by the Hartford office of this defendant by mail to the office of the Gulf Oil Corporation at Pittsburgh, Pennsylvania; that all premiums upon said policy and certificates are payable and are paid by the Gulf Oil Corporation from its Pennsylvania office to the Hartford, Connecticut, office of this defendant; that no part of the transactions with reference to the said policy and certificate, or any matter pertaining thereto were or are handled with the employee by the Connecticut General Life Insurance Company, but instead, they are handled with the Gulf Oil Corporation at its Pittsburgh, Pennsylvania, office; that the Gulf Oil Corporation is incorporated under and by virtue of the laws of the State of Pennsylvania,

and has the Home Office in Pittsburgh in that state; that the Connecticut General Life Insurance Company is incorporated under and by virtue of the laws of the State of Connecticut and has its principal office and place of business in Hartford in said state; that the Connecticut General Life Insurance Company is not doing an insurance business, nor has it ever done such, in the State of Texas, and maintained no agent therein for the purpose of this policy, or for the purpose of any other insurance business; that because of such this policy is entitled to be interpreted under the laws of the State of Connecticut or the State of Pennsylvania, or both.

9.

For further answer herein, this time particularly with reference to the claim for attorneys' fees and penalties, this defendant says that in view of the allegations made in the foregoing paragraph to the effect that Policy G-5039-R was and is a contract entered into in the State of Connecticut and the State of Pennsylvania, and since neither under the laws of Connecticut nor the laws of Pennsylvania are attorneys' fees and penalties allowed and permitted in a case and claim of this character to the plaintiff and/or his attorney, to be paid by the defendant, but that instead, the plaintiff and/or his attorney, cannot recover penalties and/or attorneys' fees from the defendant under the laws of either of said states, therefore, the plaintiff is not entitled for this additional reason to recover any at-

torneys' fees and penalties in this suit, if he is entitled to recover any amount at all.

10.

Further answering herein, this defendant says that the clause in the policy sued upon requiring written notice of disability suffered by an employee during the period of his employment or within sixty days thereafter, which clause is quoted verbatim in this answer, is in all things valid and enforcible under the laws of the State of Pennsylvania, where the insurance contract was made and entered into and the plaintiff herein having failed to give such notice, as required by the terms of the policy, should not be allowed to recover herein and to allow a recovery herein on the part of the plaintiff, in the face of his failure to give notice, within the time required, would be in violation of Amendment 14 to the United States Constitution, Subdivision 1 thereof, which provides against the deprivation of any person's property without due process of law, and would be contrary to Subdivision 1, Section 14, of the United States Constitution, which prohibits any state from abridging the privileges or immunities of citizens of the United States, this being a contract under the laws of Pennsylvania involved, and would be a violation of Subdivision 1 of the Fourteenth Amendment of the United States Constitution by denying this defendant the equal protection of the law, this being a Pennsylvania contract and this defendant being a citizen of the State of Connecticut, and would further be

a violation of the contract impairment clause of the United States Constitution, this being a Pennsylvania contract involved in this suit, and this defendant being a citizen of the State of Connecticut.

11.

Further answering herein, defendant says that the contract sued upon being clearly a Pennsylvania contract and this defendant being a citizen of the State of Connecticut, to enforce the Texas statute with reference to attorneys' fees and penalties, such Texas statute being Article 4735, Revised Civil Statutes, 1925, would be in violation of Amendment 14 of the United States Constitution, Subdivision 1 thereof, which provides against the deprivation of any person's property without due process of law, and would be contrary to Subdivision 1, Section 14, of the United States Constitution, which prohibits any state from abridging the privileges or immunities of citizens of the United States, this being a contract under the laws of Pennsylvania involved, and would be in violation of Section 1 of the Fourteenth Amendment of the United States Constitution by denying this defendant the equal protection of the law, this being a Pennsylvania contract and this defendant being a citizen of the State of Connecticut, and would be in violation of the contract impairment clause of the United States Constitution, this being a Pennsylvania contract involved in this suit, and this defendant being a citizen of the State of Connecticut.

Wherefore, this defendant prays that plaintiff take nothing by his suit and that defendant do have and recover its costs in this cause expended, and in addition hereto, defendant specifically retains and relies upon its cross-action heretofore filed, and in addition to relief prayed for in this answer, respectfully prays the court to grant to it the equitable relief asked for in its cross-action.

DUFF & CECIL,
OBGAIN, CARROLL & BELL,
Attorneys for Defendant.

The State of Texas, County of Jefferson.

Before me, the undersigned authority, on this day personally appeared Lamar Cecil, who, being duly sworn, says that he is one of the attorneys for the Connecticut General Life Insurance Company and that the matters contained in the foregoing Answer are, according to the best of his knowledge, true and correct, and that the matters contained therein are based upon information furnished him by the Connecticut General Life Insurance Company and/or its duly qualified and acting officials and officers, none of whom are presently within the jurisdiction of this court.

Lamar Cecil.

Sworn to and subscribed before me, the undersigned authority, on this the 4th day of November, A. D. 1935.

E. B. Williford,
Notary Public in and for Jefferson County, Texas.

(Seal)

Endorsed:

At Law No. 1468. In the United States District Court in and for the Eastern District of Texas, at Beaumont. John Boseman vs. Connecticut General Life Insurance Company. Defendant's Second Amended Original Answer. Filed November 4th, 1935. Helen Mathews, Clerk U. S. District Court. By Catherine Wharton, Deputy.

Verdict of the Jury.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Verdict of the Jury.

We, the jury, find a verdict in favor of the plaintiff.

Austin A. Kelly,
Foreman.

Endorsed:

No. At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. Verdict of Jury. Filed November 12, 1934. F. A. King, Clerk United States District Court.

Additional Caption.

Be it further remembered that at a regular term of the District Court of the United States for the Eastern District of Texas, in the Fifth Circuit, begun and holden at Beaumont, Texas, on the 28th day of October A. D. 1935, and which term adjourned on March 2, A. D. 1936, the Honorable Randolph Bryant, United States District Judge for the Eastern District of Texas, presiding, the following proceedings were had in the case At Law No. 1468, John Boseman vs. Connecticut General Life Insurance Company:

Findings of Fact and Declarations of Law and Defendant's Exceptions Thereto.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Be it remembered that on November 12, 1934, the defendant, Connecticut General Life Insurance Company, filed, presented and urged a motion for instructed verdict in the cause above captioned and thereupon the court reserved action upon such motion when presented at the conclusion of the evidence and prior to any argument or charge to the jury; and thereupon prior to any argument or charge to the jury the Connecticut General Life Insurance Company on November 12, 1934, filed

and presented its motion in open court for finding of facts and declarations of law by the court upon the issues so reserved, and subject to which the verdict of the jury was accepted; and that when such was done the court also reserved action upon the motion of the Connecticut General Life Insurance Company for findings of fact and declarations of law; and said motion of the Connecticut General Life Insurance Company for findings of fact and declarations of law having been continuously urged since such time; the court now in open court acts upon same and refuses to find the following facts, as requested by the defendant:

(1) The court refuses to find "that group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania, and is subject to interpretation in this court in accordance with the laws of Pennsylvania."

The court does further refuse to make the following declarations of law requested by the defendant:

(1) That group policy G5039R and the plaintiff's insurance thereunder were and are subject to interpretation in accordance with the laws of the State of Pennsylvania; and that the failure of the plaintiff to give notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment defeats a recovery by him in this cause; but instead, this court declares the law to the contrary.

(2) This court further refuses to declare as a law, as requested by the defendant, that attorneys' fees and penalties cannot be collected by the plaintiff in this suit because the contract involved is a Pennsylvania contract; but instead, the court declares to the contrary that the contract was a Texas contract and that attorneys' fees and penalties can be collected by the plaintiff under Article 4736 of the Revised Civil Statutes of Texas.

To which action of the court in refusing to make the findings of fact as above shown, and in refusing to declare the law as stated above, the defendant in open court, upon such court's refusal on December 26, 1935, prior to rendition of judgment in this cause, excepted to each and every refusal of the court concerning such findings, and declarations, and was allowed its exceptions, which are ordered filed.

Done this the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding

However, in connection with the defendant's request for specific findings of fact and declarations of law, the court does make and file, in open court prior to rendition of judgment, in response to such requests, and in response to defendant's motion for peremptory instruction, and in response to defendant's motion for judgment *non obstante veredicto*, the following findings of fact and declarations of law:

FINDINGS OF FACT.

(1) That group policy G5039R, and plaintiff's insurance thereunder, was and is a contract of the State of Texas, and is subject to interpretation in this court in accordance with the laws of the State of Texas.

(2) That the plaintiff herein wholly failed and omitted to give any notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment, which occurred on October 8, 1932.

(3) That the provision found in group contract G5039R, and the certificate issued to John Boseman thereunder, which required notice of a claim for total and permanent disability under same within sixty days after termination of employment of John Boseman, was valid under the laws of Pennsylvania.

(4) However, the fact that such provision for notice was valid under the laws of the State of Pennsylvania does not defeat this claim and cause, since same is to be interpreted under and in accordance with the laws of the State of Texas.

(5) That no attorneys' fees or penalties in a case of this character could be collected under the laws of the State of Pennsylvania.

(6) However, attorneys' fees and penalties can be collected in this suit by the plaintiff, since it is to be interpreted and tried in accordance with the laws of the State of Texas.

CONCLUSIONS OF LAW.

(1) That the provision for notice of claim within sixty days by the plaintiff was invalid under the laws of the State of Texas and therefore not enforceable in this suit.

(2) That Article 4736 of the Revised Civil Statutes of Texas entitled the plaintiff to attorneys' fees and penalties in this suit and is applicable to this cause.

To the findings set forth in subdivisions 1, 4 and 6 under "Findings of Fact" above and the declarations of law, each and all, declared by the court, the defendant then and there in open court prior to rendition of judgment excepted to each and all of same and was allowed its exceptions.

Done this the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law No. 1468. John Boseman vs. Connecticut General Life Ins. Co. United States District Court in and for the Eastern District of Texas, Beaumont Division. Findings of Fact and Declarations of Law. Filed December 26, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Order Granting Plaintiff's Motion for Judgment.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

On this the 26th day of December, A. D. 1935, came on to be considered plaintiff's, John Boseman, motion for judgment duly and timely filed in this cause, and after consideration thereof the court is of the opinion that same should be granted.

It is, therefore, ordered and decreed that plaintiff's motion for judgment be, and it is, in all things granted.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. Order Granting Plaintiff's Motion for Judgment. Filed December 27th, 1935. Helen Mathews, Clerk United States District Court. By Susie Kerr, Deputy.

Order Overruling Defendant's Motion for Judgment.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Be it remembered that on December 26, 1935, in open court, prior to the decision of the case above captioned by the judge and prior to rendition of judgment by the court in such matter, came on to be heard the motion of the defendant, Connecticut General Life Insurance Company, for judgment *non obstante veredicto* in its favor in the cause above captioned, said motion having been filed and presented to the court by the defendant on November 15, 1934, and continuously urged by the defendant since such time; and after due and proper notice to all the parties of and concerning such motion, and the court having considered said motion and each ground thereof, and being of the opinion that said motion by the Connecticut General Life Insurance Company for judgment in its favor as to all amounts sued for by the plaintiff, and its motion, in the alternative, for judgment in its favor as to the suit by the plaintiff for attorneys' fees and penalties, should each and all be overruled and refused, such is accordingly hereby done; to which action of the court the defendant, Connecticut General Life Insurance Company, then

and there in open court excepted and its exception is ordered entered of record, both as to the entire amount sued for by the plaintiff and as to the action of the court in overruling its motion for judgment against the plaintiff as to attorneys' fees and penalties sued for.

This the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law No. 1468. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. Order Overruling Defendant's Motion for Judgment. Filed December 26, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Judgment.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

On the 8th day of November, A. D. 1934, came on regularly to be heard the above entitled and numbered cause, and the plaintiff, John Boseman, ap-

peared in person and by his attorneys, and the defendant, Connecticut General Life Insurance Company, appeared by its attorneys, and whereupon, all parties announced ready for trial, and it was ordered by the court that hearing hereof proceed.

Whereupon, came a jury of twelve good and lawful men, consisting of Austin A. Kelley and eleven others, who were duly impaneled and sworn to try said cause, and said cause proceeded to trial; and the jury, after hearing the pleadings, the evidence, argument of counsel, and thereafter the charge of the court, retired to consider of their verdict; and after consideration thereof returned into open court on the 12th day of November, A. D. 1934, with their verdict as follows, to-wit:

> "We, the jury, find a verdict in favor of the plaintiff."

And it appearing to the court that the jury having found for the plaintiff and against the defendant, and that under such finding as made by the jury, and it further having been conclusively established: that plaintiff gave due notice and submitted due proof of his permanent total disability to the Connecticut General Life Insurance Company and the Gulf Refining Company; and that the plaintiff made demand upon the defendant more than thirty days prior to the filing of this suit, for payment of permanent total disability benefits under Certificate No. R-23558 and Policy No. G5039-R; and that the defendant failed to pay plain-

tiff such benefits within thirty days after demand being made therefor; and further that Policy No. G5039-R, upon which plaintiff's suit was predicated, was applied for and performed in Texas, and the final acts necessary to make the policy effective were performed in Texas, and that Policy No. G5039-R and the Certificate No. R-23558, issued him thereunder, is a Texas contract; and it further having been conclusively established that under the pleadings and undisputed testimony the plaintiff is entitled to recover One Thousand ($1,000.00) Dollars as reasonable attorney's fees; the plaintiff, John Boseman, is entitled to a judgment against the defendant, Connecticut General Life Insurance Company, in the sum of Four Thousand ($4,000.00) Dollars, the principal amount of the Certificate No. R-23558, and for One Thousand ($1,000.00) Dollars as reasonable attorney's fees, and for twelve (12%) per cent of the amount sued upon as penalty for defendant's failure to pay after demand for payment, or Four Hundred Eighty ($480.00) Dollars, making a total of Five Thousand Four Hundred Eighty ($5,480.00) Dollars.

It is, therefore, ordered, adjudged and decreed by the court that plaintiff, John Boseman, do have and recover of and from the defendant, Connecticut General Life Insurance Company, the sum of Five Thousand Four Hundred Eighty ($5,480.00) Dollars, with interest thereon at the rate of six (6%) per cent per annum until paid, said interest on the principal amount of

Four Thousand Dollars to commence on the 1st day of April, A. D. 1934, same being thirty days after proof of loss was submitted, together with all costs of suit, for which execution may issue as often and as many as may be necessary. It is further ordered, adjudged and decreed by the court that the officers of the court may have their execution against the defendant for their costs.

Entered this 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. Judgment. Filed December 27, 1935. Helen Mathews, Clerk United States District Court. By Susie Kerr, Deputy.

Bill of Exceptions.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

BILL OF EXCEPTIONS.

Be it remembered that upon the trial of the above styled and numbered cause before His Honor, Randolph

Bryant, then presiding, and the jury, which trial began on the 8th day of November, A. D. 1934, and during said trial the following proceedings were had, to-wit:

Appearance: Howell & Howell by Leon Howell, appearing for the plaintiff; Orgain, Carroll & Bell and Duff & Cecil by Lamar Cecil, appearing for the defendant.

By Mr. Howell: "Your Honor, we offer in evidence the certificate issued to John Boseman, dated April 1, 1932."

Mr. Cecil: "We object to that if it is offered for any purposes except as a means of identifying this man as one of the insured under group policy G5039R."

The Court: "Well, that is the only purpose for which it is offered?"

Mr. Howell: "That is all."

THE CERTIFICATE.

"This certificate is issued pursuant to the following provision of policy G5039R:

Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled, to whom payable, and the conversion privilege.

"THE CONNECTICUT GENERAL LIFE INSURANCE
COMPANY OF HARTFORD, CONNECTICUT
Certifies that it has issued a policy of
Cooperative Group Life Insurance
to
Gulf Oil Corporation of Pennsylvania
And/or Subsidiary and/or Affiliated Companies

and subject to the terms and conditions of said policy numbered G5039R executed and delivered in the Commonwealth of Pennsylvania

John Boseman
an employee

is insured under Schedule B of said policy for the sum of

Four Thousand Dollars

subject to increase as provided on page two hereof payable in case of death

In Accordance With Attached Beneficiary Rider.

....., the beneficiary or in case of permanent total disability, occurring before age 60, to the insured.

"If the beneficiary does not survive the employee, then payment shall as the Company may elect be made to the employee's widow or widower, or to the surviving children in equal shares or to the executor or administrator of the insured employee.

"If any beneficiary is a minor his share may be paid, at the discretion of the Company, to such person as is, in the opinion of the Company, caring for and supporting him.

"Payment to any person set out in the above paragraphs will release the Company from all further liability to the extent of such payment.

"Any employee may name a new beneficiary or new method of payment of proceeds of this insurance

by filing with his superior a written request therefor. These changes become effective only upon receipt of the written request at the Home Office of the Company.

"'Conversion Privilege. If written application and payment of premium are made by any employee to the Company within 31 days after termination of his employment for any reason whatsoever, the Company will issue, without evidence of insurability, any policy of life insurance applied for which is customarily issued by it, except Term Insurance, in an amount not greater than the amount of the employee's protection under this group policy (G5039R) at the time of such termination. The new policy will be issued at the attained age of the employee and for the premium applicable to the class of risk to which such employee then belongs. This conversion privilege shall be in lieu of all other benefits under this policy (G5039R).'

"Application for such conversion should be made to the Connecticut General Life Insurance Company, Hartford, Connecticut. This insurance is not in effect during the 31 days granted for conversion, as it automatically ceases at termination of employment.

Connecticut General Life
Insurance Company,
F. B. Wilde,
Secretary.

All certificates under Policy G5039 and/or Policy G5545 are hereby made null and void as of March 31, 1932, and this certificate under Policy G5039R is issued in lieu thereof.

No. R 23558. Effective April 1, 1932.

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Schedule B.

"The following table applies to each employee who is insured under Schedule B and shows the total amount of insurance in force on such employee according to salary class at the completion of the respective periods of continuous service.

"The salary class of each employee is determined initially by monthly salary which is in effect on the date the insurance on such employee becomes effective as follows:

"Salary class 1-B—Employee receiving salary of less than $150.00 per month

Salary class 2-B—Employees receiving salary of $150 or over but less than $250 per month

Salary class 3-B—Employees receiving salary of $250 or over but less than $450 per month

Salary class 4-B—Employees receiving salary of $450 or over but less than $650 per month

Salary class 5-B—Employees receiving salary of $650 or over per month.

Completed Years of Continuous Service		Salary Class 1-B	Salary Class 2-B	Salary Class 3-B	Salary Class 4-B	Salary Class 5-B
1	Amount of insurance	$2,000	$3,000	$5,500	$9,500	$13,500
2	Amount of insurance	2,250	3,250	5,750	9,750	13,750
3	Amount of insurance	2,500	3,500	6,000	10,000	14,000
4	Amount of insurance	2,750	3,750	6,250	10,250	14,250
5	Amount of insurance	3,500	5,000	9,500	14,500	19,500
6	Amount of insurance	3,750	5,250	9,750	14,750	19,750
7 or more	Amount of insurance	4,000	5,500	10,000	15,000	20,000

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

"If the monthly salary of any insured employee received in January or July of any year, is increased so as to transfer such employee to a higher salary class, the amount of insurance on such employee shall be automatically increased, on the February 1 or August 1 immediately following the change in salary class, to the amount for which he is eligible in the new salary class.

"If the monthly salary of any insured employee received in January or July of any year, is decreased, nevertheless his insurance salary class, under the above table, shall not be affected by such decrease.

"If employee through neglect, or otherwise, fails to pay his premium in advance, his insurance is automatically cancelled at the end of the period for which the premium is paid. If an employee's insurance is cancelled other than by termination of employment, it can be reinstated thereafter only upon submission at the employee's expense, of evidence of insurability satisfactory to the Insurance Company.

"An employee absent from work for any cause, must immediately notify his superior in writing, giving reason for his absence, otherwise, he will be considered as having left the employee and his insurance will be cancelled. When his employment ceases it will be necessary for the employee to apply for refund of payments made in advance on account of premium.

"If a certificate is lost, application should be made immediately for duplicate.

"If an employee is transferred from one company, department or district to another company, department or district, he must follow his case through in order to protect his insurance.

(Page 3)

"Total Disability: Any employee shall be deemed totally disabled within the meaning of policy G5039R if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation.

"Permanent Total Disability: If said total disability began before age sixty, and presumably during the life of such employee will prevent the employee from pursuing any occupation for wages or profit, such employee shall be deemed permanently and totally disabled within the meaning of policy G5039R.

"In addition to all other causes of permanent total disability, the entire and irrecoverable loss of the sight of both eyes, or the loss of the use of both hands, or of both feet, or of one hand and one foot, shall constitute permanent total disability within the meaning of policy G5039R, provided such loss occur before age sixty.

"The Company shall have the right and the opportunity to examine the person of such employee when and so often as it may reasonable require during the pendency of claim hereunder.

"The amount of insurance payable in the event of permanent total disability shall be the amount due at the time such disability began.

"Benefits: Immediately upon receipt of proof satisfactory to the Company that any insured employee has become permanently totally disabled, as defined above, the Company will, in lieu of all other benefits and options provided in policy G5039R, pay to the insured employee the amount of insurance in force on the life of such employee hereunder.

"Upon approval by the Employer any permanent total disability claim shall be paid in instalments as requested. If paid in instalments interest at the rate of not less than 3½% per annum will be allowed on the unpaid balance.

"If, in the opinion of the Company, such permanent total disability is due to or accompanied by mental incapacity, payment may be made to the person who, in the opinion of the Company, is caring for and supporting such disabled employee. Payment so made shall release the Company from all liability to the extent of such payment.

"Death During Disability: If any employee, whose claim for permanent total disability benefits hereunder is approved by the Company,

(1) dies before lump sum payment is made or before instalment payments begin, the insurance shall be paid as a death claim as provided in the policy; or

(2) dies while receiving instalment payments, the balance of said instalments shall be commuted at the

rate of 3½% compound interest per annum and paid as a death claim as provided in the policy.

"Termination of Insurance: Upon termination of employment of any insured employee, his insurance shall be cancelled as follows except as hereinafter provided:

1. Employees who upon termination of employment request a refund of the unearned premium shall have insurance cancelled upon termination of employment.

2. Employees who do not request a refund of premium but have not paid for the insurance beyond the end of the month in which termination of employment occurs shall have the insurance continued to the end of that month.

3. Employees who do not request a refund of premium and have paid for the insurance beyond the month in which termination of employment occurs shall have the insurance continued to the end of the month following the month in which termination of employment occurs.

"If any employee cancels his insurance, it shall cease immediately.

"Continuity of Service, provided Payments are made by Employees as due:

"If any employee leaves the Employer's service except for temporary lay-off on account of lack of work and enters the service of any other corporation, firm or individual even temporarily, his employment shall thereupon terminate.

"If any employee is temporarily laid off on account of lack of work and his insurance is cancelled, his insurance may be reinstated upon his return to active service and his employment record will be considered continuous from the original employment date, notwithstanding the fact that he may have been working in the meantime.

"In the case of any employee absent from duty due to ill health, or other disabling cause and not employed elsewhere during such absence, he shall be considered as continuing in the Employer's service unless and until the Employer informs the Company that his employment has terminated.

"No payment for death of any employee while insured under policy G5039R shall be made unless written notice thereof has been presented to the Company within one year after termination of active service of such employee with the Employer and no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice of such disability to the Company during the said period of employment or within 60 days thereafter.

"No action shall be brought under policy G5039R unless it be commenced within two years next after the termination of the employment of the insured employee."

ENDORSEMENT ON CERTIFICATE.

"The Connecticut General Life Insurance Company
of
Hartford, Connecticut
Cooperative Group Life Insurance
Issued to the
Gulf Oil Corporation of Pennsylvania
for the benefit of the
employees of Itself
and its Subsidiaries

"Certificate No. R 23558
issued under and subject to the terms
and conditions of policy No. G5039R
To
John Boseman

"Method of Claim Settlement.

Note: Entries in this register are to be made only by The Connecticut General Life Insurance Company at its Home Office in Hartford, Conn.

"In case of a claim the proceeds of this certificate are to be paid as follows:

"In monthly instalments of $100 each to each beneficiary.

F. B. Wilde,
Secretary for Connecticut Gen.
Life Ins. Co."

RIDER ATTACHED TO CERTIFICATE.

"Connecticut General Life Insurance Company
Hartford, Conn., April 1, 1932.

"Beneficiary Rider to be attached to and form a part of Certificate No. R 23558 issued to John Bose-

man who is insured under policy No. G5039R issued by the Connecticut General Life Insurance Company to Gulf Oil Corporation of Pennsylvania.

"Any sums payable under the above policy by reason of the death of the above insured shall be paid to:

"3/8 to Nancy Boseman, mother of the Insured, if living; otherwise to Mamie Boseman, wife of the Insured, if living; otherwise payment shall be made in accordance with the terms of the policy.

"5/8 to Mamie Boseman, wife of the Insured, if living; otherwise to Nancy Boseman, mother of the Insured, if living; otherwise payment shall be made in accordance with the terms of the policy.

Connecticut General Life Insurance Company,
F. B. Wilde,
Secretary."

Mr. Howell: We next offer in evidence proof of loss made by John Boseman on the 25th day of April, 1933, and forwarded to the Connecticut General Life Insurance Company, and in due course of mail received by Connecticut General Life Insurance Company, which proof of loss is on the form furnished by the Connecticut General Life Insurance Company, executed by John Boseman and witnessed by G. L. Howell, which proof of loss we limit for the purpose of only showing that such proof was furnished and not the contents."

PROOF OF LOSS.

"CONNECTICUT GENERAL LIFE INSURANCE COMPANY

Hartford, Connecticut.

Proof of Total and Permanent Disability.

1. (a) Name of Policyholder or Certificateholder, John Boseman.
   (b) Present address, 834 Hegget Avenue, Port Arthur, Texas.
2. Policy number G5039R, Certificate number R23558, Amount, $4,000.
3. Date and place of birth, March 18, 1892 at New Iberia, La.
4. Name and address of all physicians consulted for any cause within the last five years, Dr. Klatt, Galveston, Texas; Dr. Ray Orrill, Port Arthur, Texas.
5. Occupation when disability began—Fire Department, charging fire extinguishers and foam tanks and digging out water lines for repair.
6. Date finally gave up all work, Laid off on account of slack work Oct. 7, 1932. Recalled to employment and worked March 30, 1933. Reported to work and was examined by company physician, Dr. Long, on March 31, 1933, and pronounced unfit for further service on account of physical condition.
7. Cause of disability, Re-occurrence of old hernia, defective vision caused from alum dust in eyes, injury to side and back from a fall, probably complicated by disease.

8. What other insurance providing disability protection did you carry at the commencement of disability? None.

Because of the above disability, claim is now made for the Protection in the event of Total and Permanent Disability as provided in the contract.

By furnishing this blank the Company shall not be held to admit the validity of any claim or waive the breach of any condition of the policy.

I hereby certify and declare all the above statements and answers to be full, complete, and true to the best of my knowledge.

Signed at Beaumont, Texas, this 25th day of April, 1933.

(Signed) John Boseman,
Signature of Claimant or Guardian.

Witness
G. L. Howell."

Mr. Howell: "We next offer in evidence under the same qualifications the attending physician's statement which accompanied the proof of loss executed by John Boseman, executed by Dr. F. W. Sutton on March 1, 1934."

PHYSICIAN'S STATEMENT.

"Attending Physician's Statement.

1. Name of Insured, John Boseman.
2. Present Residence, Port Arthur, Texas.
3. Date of first visit in present disability, April 25, 1933.

4. Names and Addresses of any physicians who were in attendance prior to your connection: Dr. Stewart, Port Arthur, Tex.; Dr. Orrill, Port Arthur, Tex.
5. Date on which first symptoms of present illness appeared, 1931.
6. Exact date when this claimant finally gave up all business activities: March 30, 1933.
7. History of onset including symptoms and signs to date: Several injuries. Increasing weakness; nocturia; thirst; cough with expectoration; blurred vision; Objective: Heavy glycosuria; rales over both lungs; enlarged epitrochlear glands.
8. Diagnosis and present symptoms of injury, infirmity or disease causing disability: Diabetes; chronic bronchitis; syphilis. (Symptoms above.)
9. Is the Insured absolutely totally disabled and in your opinion will he be permanently, continuously and wholly prevented for life from pursuing any and all gainful occupations? Yes.
10. If this disability will not be permanent, approximately when do you think claimant might be able to take up some useful work? Permanent.

Date Mar. 1, 1934

Sign here (signed) F. W. Sutton, M. D.
Address, Beaumont, Texas.

Graduate of Univ.
of Texas Med. Col."

Mr. Howell: We next offer in evidence letter dated April 12, 1933, addressed to Mr. Charles R.

Stevenson, Gulf Refining Company, Port Arthur. Texas, signed by G. L. Howell of the firm of Howell & Howell, which letter we offer only for the purpose of showing that notice was given to the Connecticut General Life Insurance Company of the claim of John Boseman. It is further agreed that this notice was in due course forwarded by Mr. Stevenson of the Gulf Refining Company to the Connecticut General Life Insurance Company, and that it was duly received by the Connecticut General Life Insurance Company."

LETTER TO MR. CHAS. R. STEVENSON.

"Howell & Howell
Attorneys at Law
San Jacinto Bldg.
Beaumont, Texas

April 12, 1933

"In Re: Group Policy No. 5039R
Certificate No. R23558
John Boseman vs. Connecticut General Life Ins. Co.

Mr. Charles R. Stevenson
care Gulf Refining Company
Port Arthur, Texas

Dear Sir:

John Boseman, colored, has placed with us for adjustment a claim for permanent total disability, arising under the above policy and certificate.

Kindly send us the necessary form on which to present this claim.

Thanking you for your attention to this matter.

Yours truly,

Howell & Howell,
(signed) By G. L. Howell."

Mr. Howell: "We next offer in evidence letter dated March 6, 1934, addressed to the Connecticut General Life Insurance Company of Hartford, Connecticut, with reference to the claim of John Boseman against the Connecticut General Life Insurance Company under policy G5039R and certificate R23558, in which letter demand is made upon the Connecticut General Life Insurance Company for the payment of the benefits under the certificate issued to John Boseman through policy G5039R, which letter was written by the firm of Howell & Howell and signed by Charles R. Howell, a member of the firm, and was received by the Connecticut General Life Insurance Company on March 6, 1934, which letter we offer solely for the purpose of showing that demand was made for the payment of the claim."

LETTER TO CONNECTICUT GENERAL LIFE INS. CO.

"Howell & Howell
Attorneys at Law
Suite 412-414 San Jacinto Bldg.
Beaumont, Texas

March 6, 1934

"In Re: John Boseman vs. Connecticut General Life Insurance Co. Group Policy G5039R, Cert. R23558.

"Connecticut General Life Insurance Company, Hartford, Connecticut

Gentlemen:

On the 1st inst., we sent Mr. Charles R. Stevenson of the Gulf Refining Company, Port Arthur, Texas,

on your approved form, the proof of John Boseman's permanent and total disability for forwarding to your company.

"Demand is hereby made for payment of total permanent disability benefits, in accordance with the terms and provisions of the contract of insurance, and the law of this State applicab e to insurance of this character.

Yours truly,

Howell & Howell,
(signed) By Chas. A. Howell.

CAH:MJ

cc—Mr. Chas. R. Stevenson
Care Gulf Refining Company
Port Arthur, Texas

Received
March 9, 1934."

Mr. Howell: We offer in evidence a copy of policy G5039R, which is admitted by both parties to be a true and correct copy of the policy G5039R.

Group Policy G5039R.

"In accordance with application effective April 1, 1932, Policy G5039 and Policy G5545 are cancelled as of March 31, 1932, and this policy is issued in lieu thereof. No benefits for permanent total disability or death shall be paid hereunder on any employee on whom death or permanent total disability benefits are paid under Policy G5039 or Policy G5545.

"CONNECTICUT GENERAL LIFE INSURANCE COMPANY
Hartford, Connecticut
(hereinafter called the Company)

specifies in this policy the terms and conditions under which it insures certain employees of

Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies.
(Hereinafter called the Employer)

"Immediately upon receiving due proof that any employee, while insured under this policy, has died, the Company will pay, subject to the conditions of this policy, the amount of insurance on his life as determined by the section headed 'Amount of Insurance.' Any payments made on the insurance of such employee on account of permanent total disability, as hereinafter provided, shall be deducted from the amount payable at death.

"In case of death the insurance will be paid in a lump sum, unless otherwise requested as hereinafter provided, to the person named by the employee as beneficiary to receive the insurance provided the name of the beneficiary is on file with the Company. If there is no name on file or if the beneficiary does not survive the employee, then payment shall as the Company may elect be made to the employee's widow or widower, or to the surviving children in equal shares or to the executor or administrator of the insured employee.

"If any beneficiary is a minor his share may be paid, at the discretion of the Company, to such person as is, in the opinion of the Company, caring for and supporting him.

"Upon approval by the Employer any death benefits shall be paid in instalments as requested. If paid in instalments interest at the rate of not less than 3½% per annum will be allowed on the unpaid balance.

"If any beneficiary dies while receiving instalment payments the remaining instalments, unless otherwise disposed of, shall be commuted at the rate of 3½% compound interest per annum and paid, in a lump sum, to the executors, administrators or assigns of the beneficiary.

"Payment to any person set out in the above paragraphs will release the Company from all further liability to the extent of such payment.

"This policy is issued for a term of one year from April 1, 1932, 12:01 A. M. Standard Time at the Employer's address in consideration of the application of the Employer, the payment of a binding premium of one dollar and the payment of such further premiums as are provided herein. This policy is issued and accepted subject to all conditions and privileges set forth on the subsequent pages hereof and which are hereby made a part of this contract.

"In witness whereof the Connecticut General Life Insurance Company has caused this policy to be signed at its office in the City of Hartford, the 1st day of April, 1932.

F. B. Wilde,
Secretary.

R. W. Huntington,
President

M. Remington,
Registrar.

"Co-operative Policy; One Year Renewable Term; Non-Participating; Conversion Option; Permanent Total Disability; Experience Rating Plan; Table of Rates Guaranteed Against Increase for One Year.

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PERMANENT TOTAL DISABILITY.

"Total Disability. Any employee shall be deemed totally disabled within the meaning of this policy if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation.

"Permanent Total Disability. If said total disability began before age sixty, and presumably during the life of such employee will prevent the employee from pursuing any occupation for wages or profit, such employee shall be deemed permanently and totally disabled within the meaning of this policy.

"In addition to all other causes of permanent total disability, the entire and irrecoverable loss of the sight of both eyes, or the loss of the use of both hands, or of both feet, or of one hand and one foot, shall constitute permanent total disability within the meaning of this policy, provided such loss occur before age sixty.

"The Company shall have the right and the opportunity to examine the person of such employee when and so often as it may reasonably require during the pendency of claim hereunder.

"The amount of insurance payable in the event of permanent total disability shall be the amount due at the time such disability began.

"Benefits. Immediately upon receipt of proof satisfactory to the Company that any insured employee has become permanently totally disabled, as de-

fined above, the Company will, in lieu of all other benefits and options provided in this policy, pay to the insured employee the amount of insurance in force on the life of such employee hereunder.

"Upon approval by the Employer any permanent total disability claim shall be paid in instalments as requested. If paid in instalments interest at the rate of not less than 3½% per annum will be allowed on the unpaid balance.

"If, in the opinion of the Company, such permanent total disability is due to or accompanied by mental incapacity, payment may be made to the person who, in the opinion of the Company, is caring for and supporting such disabled employee. Payment so made shall release the Company from all liability to the extent of such payment.

"Death During Disability. If any employee, whose claim for permanent total disability benefits hereunder is approved by the Company,

(1) dies before lump sum payment is made or before instalment payments begin, the insurance shall be paid as a death claim as provided on the first page of this policy, or

(2) dies while receiving instalment payments, the balance of said instalments shall be commuted at the rate of 3½% compound interest per annum and paid as a death claim as provided on the first page of this policy.

(Page 3.)

"EMPLOYEES ELIGIBLE.

Eligibility of employees for insurance under Schedule A shall be determined as follows:

"Each employee in service on April 1, 1932, who was insured on March 31, 1932, under policy G5039 but was not insured under policy G5545 and who has been in service one year and 91 days or over on April 1, 1932, becomes eligible on April 1, 1932.

Eligibility of employees for insurance under Schedule B shall be determined as follows:

"Each employee in service April 1, 1932, who was insured under policy G5545 on March 31, 1932, in accordance with the schedule of insurance effective on November 1, 1929, becomes eligible on April 1, 1932.

"Each employee in service April 1, 1932, who was not insured under policy G5545 on March 31, 1932, and on April 1, 1932, has been in service (1) less than one year becomes eligible upon completion of one year of continuous service; (2) one year but less than one year and 91 days becomes eligible on April 1, 1932.

"Each employee entering service after April 1, 1932, becomes eligible upon completion of one year of continuous service.

Eligibility of employees for insurance under Schedule C shall be determined as follows:

"Each employee in service April 1, 1932, who was insured on March 31, 1932, under policy G5545 in accordance with the schedule effective April 1, 1925,

and did not elect the schedule effective November 1, 1929, becomes eligible on April 1, 1932.

"No employee shall be eligible for insurance under more than one of the above schedules; however any employee eligible for insurance under Schedule A or Schedule C may become eligible for insurance under Schedule B by presenting, at his own expense, evidence of insurability satisfactory to the Company and his insurance under any other schedule will be automatically cancelled on the day his insurance becomes effective under Schedule B.

"Election of Insurance. An employee may elect insurance under this policy by completing any form of payroll deduction order approved by the Employer.

"Employees Insured. Each employee electing the insurance before becoming eligible, will be insured automatically on the day he becomes eligible.

"Each employee electing the insurance on the day he becomes eligible or within 90 days thereafter will be insured immediately upon electing the insurance; provided, however, that any employee becoming eligible in accordance with paragraph numbered (2) under 'Eligibility of employees for insurance under Schedule B' above who does not elect the insurance within 90 days of the day on which he completed one year of service will be insured only upon presenting at his own expense, evidence of insurability satisfactory to the Company.

"Any employee not electing the insurance within 90 days of the day he becomes eligible or re-applying

after terminating his insurance for any reason other than termination of employment, will be insured only upon electing the insurance and presenting, at his own expense, evidence of insurability satisfactory to the Company. The insurance on such employee shall be effective when he is accepted for insurance by the Company.

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"Amount of Insurance. The amount of insurance on each insured employee is determined by (a) completed years of continuous service and (b) classification by amount of monthly salary as follows:

Schedule A.

"The following table applies to each insured employee who is eligible under Schedule A and shows the total amount of insurance in force on such employee at the completion of the respective periods of continuous service:

Completed years of continuous service		
1	Amount of insurance	$1,000
2	Amount of insurance	1,250
3	Amount of insurance	1,500
4	Amount of insurance	1,750
5	Amount of insurance	2,000
6	Amount of insurance	2,250
7 or more	Amount of insurance	2,500

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

Schedule B.

"The following table applies to each insured employee who is eligible under Schedule B and shows the total amount of insurance in force on such employee according to salary class at the completion of the respective periods of continuous service.

"The salary class of each employee is determined initially by monthly salary based upon the fixed pay which is in effect on the date the insurance on such employee becomes effective as follows:

Salary Class	Employees Receiving Salary of
1-B	less than $150 per month
2-B	$150 or over but less than $250 per month
3-B	$250 or over but less than $450 per month
4-B	$450 or over but less than $650 per month
5-B.	$650 or over per month

Completed Years of Continuous Service		Salary Class 1-B	Salary Class 2-B	Salary Class 3-B	Salary Class 4-B	Salary Class 5-B
1	Amount of insurance	$2,000	$3,000	$5,500	$9,500	$13,500
2	Amount of insurance	2,250	3,250	5,570	9,750	13,750
3	Amount of insurance	2,500	3,500	6,000	10,000	14,000
4	Amount of insurance	2,750	3,750	6,250	10,250	14,250
5	Amount of insurance	3,500	5,000	9,500	14,500	19,500
6	Amount of insurance	3,750	5,250	9,750	14,750	19,750
7 or more	Amount of insurance	4,000	5,500	10,000	15,000	20,000

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

"If the monthly salary of any insured employee, based on fixed pay received in January or July of any year, is increased so as to transfer such employee to a higher salary class, the amount of insurance on

such employee shall be automatically increased, on the February 1 or August 1 immediately following the change in salary class, to the amount for which he is eligible in the new salary class.

"If the monthly salary of any insured employee received in January or July of any year, is decreased, nevertheless his insurance salary class, under the above table, shall not be affected by such decrease.

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Schedule C.

"The following table applies to each insured employee who is eligible under Schedule C and shows the total amount of insurance in force on such employee according to salary class at the completion of the respective periods of continuous service:

"The salary class of each employee is determined initially by monthly salary based upon the fixed pay which is in effect on the date the insurance on such employee becomes effective as follows:

Salary Class	Employees Receiving Salary of
1-C	less than $250 per month
2-C	$250 or over but less than $450 per month
3-C	$450 or over but less than $650 per month
4-C	$650 or over per month

Completed Years of Continuous Service	Salary Class 1-C	Salary Class 2-C	Salary Class 3-C	Salary Class 4-C
1 Amount of insurance	$2,000	$3,500	$6,000	$8,500
2 Amount of insurance	2,250	3,750	6,250	8,750
3 Amount of insurance	2,500	4,000	6,500	9,000
4 Amount of insurance	2,750	4,250	6,750	9,250
5 Amount of insurance	3,000	4,500	7,000	9,500
6 Amount of insurance	3,250	4,750	7,250	9,750
7 or more Amount of insurance	3,500	5,000	7,500	10,000

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

"If the monthly salary of any insured employee, based on fixed pay received in January or July of any year, is increased so as to transfer such employee to a higher salary class, the amount of insurance on such employee shall be automatically increased to the amount for which he is eligible in the new salary class on the February 1 or August 1 immediately following the change in salary class.

"If the monthly salary of any insured employee received in January or July of any year, is decreased, nevertheless his insurance salary class, under the above table, shall not be affected by such decrease.

"If the salary classification under which an employee was insured under Policy G5545 on March 31, 1932, was higher than the salary classification of such employee as determined by the terms and conditions of this policy, such employee shall have the privilege of electing insurance hereunder according to the salary classification under which he was insured under Policy G5545 on March 31, 1932, provided such election is made on or before July 1, 1932.

(Page 6)

PREMIUMS.

"Renewal. At the end of the first and of each subsequent policy year this policy may be renewed by the payment of premiums as herein provided.

"Determination of Average Premium Rate. On the effective date of this policy and on each annual policy renewal date thereafter an average annual premium rate will be established by dividing the premium computed on the basis of the Table of Rates provided in the paragraph entitled 'Premium Rates' at the respective ages, nearest birthday, of the employees then insured, by the amount of insurance then in force. If premiums are payable other than annually the average semiannual, quarterly or monthly premium is determined by multiplying the average annual premium by .505, .255 or .0858 1-3 respectively. The average premium rate determined will be used on all transactions during that year.

"Premium Payment. Premiums are due and payable monthly in advance at the Home Office of the Company in Hartford, Connecticut, but may be paid to an authorized agent of the Company in exchange for a receipt signed by the Secretary and countersigned by the agent. Such premiums shall be calculated by multiplying the amount of insurance in force on the respective premium due dates by the average premium rate as determined in the above paragraph.

"In addition to the binding premium there shall be due to the Company immediately, the balance, if any, of the first premium.

"On additional or increased insurance, premium charge will commence on the 1st day of the month

following the date such insurance is effective. On insurance terminated premium charge will cease on the 1st day of the month following the date such termination is effective.

"Grace Period. If any premium is not paid when due, this policy shall cease, except that thirty-one days of grace will be allowed, without interest, for the payment of all premiums other than the binding premium.

"Premium Rates. The 'Table of One Year Premiums per $1000 Insurance' shown below is guaranteed for one year. At the end of each year experience ratings may be made effective on renewal premiums.

TABLE OF ONE YEAR PREMIUMS PER $1000 INSURANCE.

"The charge for Permanent Total Disability represents 1% of each premium below age 60.

Attained Age of Insured Nearest Birthday	Premium Per $1000	Attained Age of Insured Nearest Birthday	Premium Per $1000	Attained Age of Insured Nearest Birthday	Premium Per $1000	Attained Age of Insured Nearest Birthday	Premium Per $1000
15	$5.39	36	$ 6.92	58	$ 25.08	80	$142.09
16	5.47	37	7.11	59	27.12	81	153.12
17	5.57	38	7.32	60	29.39	82	164.95
18	5.65	39	7.56	61	31.82	83	177.54
19	5.76	40	7.85	62	34.45	84	191.08
20	5.87	41	8.18	63	37.33	85	205.46
21	5.97	42	8.58	64	40.44	86	220.68
22	6.08	43	8.99	65	43.83	87	236.69
23	6.14	44	9.49	66	47.47	88	254.04
24	6.21	45	10.02	67	51.45	89	272.25
25	6.27	46	10.62	68	55.72	90	291.52
26	6.31	47	11.30	69	60.35	91	311.27
27	6.35	48	12.04	70	65.34	92	333.61
28	6.38	49	12.88	71	70.74	93	355.10
29	6.40	50	13.78	72	76.56	94	377.59
30	6.43	51	14.78	73	82.82	95	402.51
31	6.45	52	15.80	74	89.57	96	426.64
32	6.48	53	17.09	75	96.82	97	460.01
33	6.56	54	18.43	76	104.65	98	474.71
34	6.65	55	19.87	77	113.06	99	518.49
35	6.76	56	21.47	78	122.01	100	583.08
		57	23.20	79	131.70		

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"General Provisions.

"Insurance Data:

"Census. The Employer shall at the beginning of each month notify the Company with respect to the termination of the insurance of those employees whose employment has terminated since the last previous notice and with respect to new employees becoming eligible for insurance. Notice regarding such termination and additions may be given by the Employer within a reasonable time after such changes in the status of the Group occur, and upon notice being given within that time, the changes in the insurance upon such cases shall be considered as having taken effect upon the dates when they were entitled to become effective according to the provisions set forth in the policy the same as if notice of such changes had actually been given in advance.

"Termination of Insurance. Upon termination of employment of any insured employee, his insurance shall be cancelled as follows except as hereinafter provided:

"1. Employees who, upon termination of employment, request a refund of the unearned premium shall have insurance cancelled upon termination of employment.

2. Employees who do not request a refund of premium but have not paid for the insurance beyond the

end of the month in which termination of employment occurs shall have the insurance continued to the end of that month.

3. Employees who do not request a refund of premium and have paid for the insurance beyond the month in which termination of employment occurs shall have the insurance continued to the end of the month following the month in which termination of employment occurs.

"If any employee cancels his insurance, it shall cease immediately.

"Continuity of Service provided Payments are made by Employees as due.

"If any employee leaves the Employer's service except for temporary lay-off on account of lack of work and enters the service of any other corporation, firm or individual even temporarily, his employment shall thereupon terminate.

"If any employee is temporarily laid off on account of lack of work and his insurance is cancelled, his insurance may be reinstated upon his return to active service and his employment record will be considered continuous from the original employment date, notwithstanding the fact that he may have been working in the meantime.

"In the case of any employee absent from duty due to ill health, or other disabling cause and not

employed elsewhere during such absence, he shall be considered as continuing in the Employer's service, unless and until the Employer informs the Company that his employment has terminated.

"In the case of employees in the Marine Department, inasmuch as for many of them no regular payroll is kept, they being signed up anew for each voyage and since owing to the inherent conditions of employment in that department there may be occasional gaps in the continuity of the employment of men who may nevertheless be rightly considered as being steadily in the Employer's service, continuous service shall be deemed to exist for employees in the Marine Department not on payroll provided they work for no other employer between the periods for which they sign 'Articles of Agreement' with the Employer.

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"Change of Beneficiary. Any employee may name a new beneficiary by completing the form provided by the Company for that purpose, such change to become effective only upon receipt of the completed form at the Home Office of the Company.

"Assignment. No assignment of any insurance shall be effective until it is approved by the Employer and a copy of such approved assignment filed at the Home Office of the Company. The Company will assume no responsibility for the validity of any assignment.

"Misstatement of Age. If the age of any employee has been misstated, the insurance payable will be the amount provided in the paragraph 'Amount of Insurance' but premium adjustments will be made so that the Employer shall pay the Company the actual premiums at the true age of the employee.

"Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled, to whom payable, and the following conversion privilege:

"Conversion Privilege. If written application and payment of premium are made by any employee to the Company within 31 days after termination of his employment for any reason whatsoever, the Company will issue, without evidence of insurability, any policy of life insurance applied for which is customarily issued by it, except Term Insurance, in an amount not greater than the amount of the employee's protection under this Group policy at the time of such termination. The new policy will be issued at the attained age of the employee and for the premium applicable to the class of risk to which such employee then belongs. This conversion privilege shall be in lieu of all other benefits under this policy.

"Incontestability. This policy shall be incontestable after one year from date of issue except for non-

payment of premiums; provided that no payment for death shall be made unless written notice thereof has been presented to the Company within one year after termination of active service of such employee with the Employer and no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice of such disability to the Company during the said period of employment or within 60 days thereafter.

"No action shall be brought under this policy unless it be commenced within two years next after the termination of the employment of the insured employee.

"Contract. The policy and the application of the Employer, copy of which is attached to and made a part of this policy, and the applications of the employees, if any, shall constitute the entire contract between the parties. All statements made by the Employer shall, in the absence of fraud, be deemed representations and not warranties and no statement shall be used in defense to a claim under this policy unless it is contained in the written application. Only the President or a Vice-President, Secretary or Assistant Secretary has power on behalf of the Company to make or modify this contract of insurance.

"This contract is issued and delivered in the City of Pittsburgh, in the Commonwealth of Pennsylvania and is governed by the laws of that Commonwealth.

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APPLICATION (ATTACHED TO POLICY).

"The Gulf Oil Corporation of Pennsylvania (in behalf of itself and its subsidiaries, and affiliated companies) Employer under policies G5039 and G5545 issued by the Connecticut General Life Insurance Company of Hartford, Connecticut, hereby requests that the aforesaid policies be cancelled as of March 31, 1932, and that there be issued in lieu thereof policy G5039R, effective as of April 1, 1932, and that on and after April 1, 1932, only those employees who shall have complied with all the terms and conditions of policy G5039R, shall be insured. It is further requested that policy G5039R be issued in Pittsburgh, in the Commonwealth of Pennsylvania, and that it be governed by the laws of that Commonwealth.

"Dated at Pittsburgh, Pennsylvania, this 15th day of March, 1932.

Gulf Oil Corporation of Pennsylvania,
By (signed) J. F. Drake.

Witness:
(signed) H. L. Stone."

ENDORSEMENT ON POLICY G5039R.

"Co-operative Policy; One Year Renewable Term Non-Participating; Conversion Option; Permanent Total Disability; Experience Rating Plan; Table of Rates Guaranteed Against Increase For One Year.

Policy No. G5039R.

Connecticut General Life Insurance Company,
Hartford, Conn.

Co-operative Life Insurance
Policy
Issued to
Gulf Oil Corporation of
Pennsylvania and/or sub-
sidiary and/or affiliated
companies
of
Pittsburgh, Pennsylvania

Date April 1, 1932."

Mr. Howell: "We next offer in evidence the file marks on plaintiff's petition filed in the District Court of Jefferson County, Texas, and later removed to this court, showing it was filed on April 20, 1934."

File Marks on Plaintiff's Original Petition.

"No. 43226. In the District Court of Jefferson County, Texas. John Boseman vs. Connecticut General Life Insurance Company. Plaintiff's Original Petition. Filed April 20, 1934, R. E. Cowan, Clerk District Court, Jefferson County, Texas, by W. J. Bergman, Deputy."

Mr. Howell: "We next offer in evidence certified copy of permit issued to the Connecticut General Life Insurance Company to do business in the State of Texas from April 1, 1932, through February 28, 1933, together with a certificate of the Insurance Commissioner of the State of Texas."

Certified Copy of Permit.

"Certificate

State of Texas

Board of Insurance Commissioners

"It is hereby certified that the instrument which is hereunto attached is a true, full and correct copy of Certificate of Authority of the Connecticut General Life Insurance Company, Hartford, Connecticut, for the years ending February 28, 1926, 1928, 1930, 1932 and 1933, now on file in and forming a part of the records of this Department.

In witness whereof I have hereunto subscribed my name officially and have hereon impressed my seal of office at the City of Austin, in the State of Texas on this 21st day of March, A. D. 1934.

(signed) R. L. Daniel,
Chairman Board of Insurance Commissioners.

(Seal)

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"Certificate No. 162

The State of Texas Company No. 2377

Board of Insurance Commissioners

of the

State of Texas

"This is to certify that

Connecticut General Life Insurance Company

Hartford, Connecticut

has, according to sworn statement, complied with all requirements of law applicable thereto and is hereby authorized to pursue the business of

Life, Health & Accident

insurance within this State for the year ending February 28, 1933.

In witness whereof, I hereunto sign my name and affix my official seal at Austin, Texas, this 21st day of March, 1932.

(signed) W. A. Tarver,
(Seal) Chairman of Board."

DR. T. A. FEARS was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Agreement of counsel that Dr. T. A. Fears was a duly licensed, practicing and qualified physician:

"I gave John Boseman a physical examination, including his teeth, tonsils, head, chest, abdomen, examined his urine, prostate, and blood test, for the purpose of determining his physical condition, and found him suffering from diabetes, which is an incurable disease causing a general weakness of the entire system. Assuming that Boseman in 1931, the latter part of the year, commenced to suffer from general weakness, loss of weight, from excessive thirst, from excessive urination, giving such symptoms of the presence of either the early stages or the commencement of diabetes, and having found him to be suffering from diabetes at the time I examined him on November 6, 1934, it would be my opinion that he was suffering from diabetes in the latter part of 1931. With that condition of diabetes present he would be unable to do any manual labor requiring muscular effort and phys-

ical exertion, and any attempt to do such work would endanger his life. It is my opinion that he now is totally and permanently disabled and that such condition has existed since and prior to October 8, 1932."

MR. C. R. STEVENSON was then called as a witness on behalf of plaintiff, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Howell.

"Since December 16, 1929, I have held the official position of plant manager of the three Texas refineries, including the Port Arthur plant, with the Gulf Refining Company. I do not know of any of the arrangements made with the Connecticut General Life Insurance Company under the various group policies that were issued by it covering the employees of the Port Arthur plant; I know of the issuance of the policies and deductions from wages, and the payments of the contributory insurance that the employees bear. With reference to my familiarity with the present and past payment of claims, and how they are paid, to the beneficiaries of the employees—I will state that we receive from our Pittsburgh office Connecticut General Life Insurance Company checks made payable to beneficiaries, and disburse those checks to beneficiaries as received or to the estate of the beneficiaries. I do not recall that I have ever dis-

tributed any checks to the individuals themselves where they had qualified under the disability benefits, but I probably would if there were any. I have delivered checks in payment of claims against the Connecticut General Life Insurance Company in Texas."

(Stipulation as to Duration of Policy G5039R.)

The testimony of the witness was interrupted while it was stipulated between the counsel for the respective parties that master policy G5039R went into effect as to the plant at Port Arthur, Texas, at midnight on March 31, 1932, and was cancelled as to such plant and its employees on midnight, April 30, 1933.

Mr. Stevenson's testimony continued:

"Under group policy G5039R the employees of the Gulf Refining Company executed pay-roll deduction orders. After such were executed, pay-roll deductions were made at Port Arthur, Texas, from the employees who did hold certificates under that policy. As to what was done with those deductions I will state the remittances were made to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, to cover the deductions made as to the employees of the Port Arthur plant at Port Arthur, Texas. The employees of the Port Arthur plant who were insured under the prior two policies, to-wit, G5039 and G5545, made an appli-

cation to the Gulf Refining Company, applying for the cancellation of their insurance under said policies then in effect and applying for insurance under the new policy (G5039R) to be taken out. Those applications were made and executed in Port Arthur. I don't know what disposition was made of those applications."

Agreement Between Counsel that Gulf Refining Company Was Subsidiary or Affiliated Company of Gulf Oil Corporation of Pennsylvania.

It is agreed between attorneys for the respective parties and entered in the record that the Gulf Refining Company is a subsidiary or affiliated company with the Gulf Oil Corporation of Pennsylvania.

Cross Examination of Mr. Stevenson by Mr. Cecil.

"That insurance was a voluntary proposition and nobody was compelled to take it if they didn't want it. The employees did not pay all the premiums on group policy G5039R. Either the Gulf Refining Company or the Gulf Oil Corporation of Pennsylvania, I don't know which one, paid part of it. The employer contributed some of the premiums on the insurance covering the employees. As to the payroll deduction orders made by the employees, I, of course, had to have that as au-

thority to make those deductions from the men's wages. We could not deduct any sum from the wages unless the men authorized us. My office had no direct correspondence with the Connecticut General Life Insurance Company on any matter. Our dealings in regard to it are exclusively with Mr. H. J. Smith, Assistant Treasurer in Charge of Insurance, Gulf Refining Company, Pittsburgh, Pennsylvania. As to whether or not the Gulf Refining Company at Port Arthur maintains an insurance department headed by Mr. Gardiner for the benefit and aid of its employees who accepted and wanted and took out this insurance, I will state we attempted to look after the interests of our employees many of whom are ignorant men; they don't understand what could or should be done and we endeavor to explain to them. Our activities in regard to this insurance at Port Arthur, whatever activities we have are purely and absolutely for the aid and benefit of our employees. We do not act in any capacity to aid or benefit the Connecticut General Life Insurance Company. Our interests are with our employees there, and we handle any questions—if they want to change beneficiaries or come to us for counsel and advice—we act for our employees the best we can. They come to us with these various propositions or to someone of our force there in the office at Port Arthur. At their request we do act for them and

take those matters up with Mr. Smith of the Gulf Refining Company at Pittsburgh, Pennsylvania. As to what he does, I don't know. None of the employees of the Gulf Refining Company at Port Arthur act as agents for the Connecticut General Life Insurance Company. I have never done so and do not know of anyone else having done so. All of our correspondence and the correspondence of our office in regard to these matters is not with the Connecticut General Life Insurance Company, but with the Pittsburgh office."

Re-Direct Examination by Mr. Howell.

"I do identify the two letters you hand me; that is my signature. As to whether or not, when I state in there that I am reserving certain rights and defenses on behalf of the Gulf Refining Company to the Connecticut General Life Insurance Company, I was doing such under instructions I received from our Mr. Smith, I will state this was a form that I followed for years. I do not recall under what instructions it was received. Mr. Smith did write me that the Connecticut General Life Insurance Company had denied, or done this, or not done this or the other thing."

Plaintiff then offered in evidence the two letters identified by Mr. Stevenson heretofore, said letters being:

LETTERS OFFERED BY COUNSEL FOR PLAINTIFF DURING RE-DIRECT EXAMINATION OF MR. STEVENSON.

"Gulf Refining Company
Charles B. Buerger,
Vice-President

Port Arthur, Texas, April 15, 1933.

Refineries
Port Arthur, Texas
Fort Worth, Texas
Sweetwater, Texas

Chas. R. Stevenson,
Plant Manager

Messrs. Howell & Howell, Attorneys At Law,
San Jacinto Building,
Beaumont, Texas.

Dear Sirs:

"I have your letter of the 12th instant, relative to alleged total and permanent disability of John Boseman. As requested, I enclose herewith claim form, No. B-672. It is understood, of course, that by furnishing this blank neither the Gulf Refining Company nor the Connecticut General Life Insurance Company shall be held to admit the validity of any claim, or to waive the breach of any condition of the policy.

"If you decide to use this form, please return it, when fully executed, to this office for forwarding to the insurance company.

Yours very truly,

Enclosure. (signed) Chas. R. Stevenson."

"Gulf Refining Company.
Charles B. Buerger,
Vice-President

Port Arthur, Texas, March 2, 1934.

Refineries
Port Arthur, Texas
Fort Worth, Texas
Sweetwater, Texas

Chas. R. Stevenson,
Plant Manager

Messrs. Howell & Howell, Attorneys at Law,
San Jacinto Building,
Beaumont, Texas

Dear Sirs:

"Your letter of the 1st instant, relative to claim of John Boseman, does not state that you sent copy of the proof form to the Connecticut General Life Insurance Company, and we are therefore sending the form today to that company, through our Pittsburgh office. In the event we are advised of the insurance company's decision, we shall notify you promptly.

Yours very truly,

(signed) Chas. R. Stevenson."

Re-Cross Examination of Mr. Stevenson by Mr. Cecil.

"These certificates evidencing the fact certain employees were insured under one policy or the

other, particularly group policy G5039R, which our office delivered to the various employees who were entitled to them, came to us from our Pittsburgh office. They did not come to us from the Connecticut General Life Insurance Company."

Witness excused.

Mr. Howell: "Now, Mr. Cecil, in order that Mr. Vines can leave with Mr. Stevenson, will you stipulate that Mr. Vines, who is assistant treasurer of the Gulf Refining Company, in his capacity as assistant treasurer, during the life of the Master Policy, forwarded the premiums to the Gulf Oil Corporation, and they were in turn given to the Connecticut General Life Insurance Company?"

Mr. Cecil: "I won't stipulate what happened to them after they got to the Gulf Oil Corporation at Pittsburgh, Pennsylvania, because I don't know."

The Court: "Well, the only point you wish to bring out in that connection is that the company made proper deductions with this certificate against the pay which was due this plaintiff?"

Mr. Howell: "Yes, sir."

Mr. Cecil: "You mean the Gulf Refining Company?"

The Court: "Yes, sir."

Mr. Howell: "And that they took these with a large number of other deductions, and forwarded to their—"

The Court: "There isn't any controversy about that, is there?"

Mr. Cecil: "They were sent to Pittsburgh. I will be willing to admit the premiums were sent to Pittsburgh, Pennsylvania, to the office of the Gulf Oil Corporation of Pennsylvania."

Mr. Howell: "That is satisfactory. I will be glad to excuse both of these gentlemen, then."

MR. H. E. GARDINER was then called as a witness on behalf of the plaintiff, and after being duly sworn, testified as follows:

Direct Examination by Mr. Howell.

"The official position that I hold with the Gulf Refining Company is in the accounting department. I have under my supervision the insurance records of the Gulf Refining Company, in connection with the certificates or policies issued by the Connecticut General Life Insurance Company for John Boseman and all others. I have here the application of Boseman for insurance under group policy G5039R."

Mr. Howell: "I am introducing it all."

Mr. Howell then read to the jury the following instrument offered by him, being the instrument signed by John Boseman in connection with his insurance under group policy G5545 issued by the Connecticut General Life Insurance Company to the Gulf Oil Corporation

of Pennsylvania on April 1, 1925, and in force and effect until March 31, 1932, under which group policy G5545 John Boseman was issued, in accordance with its terms and provisions, until midnight of March 31, 1932:

"10/17/29. I hereby apply for group life insurance now or hereafter applicable to my class provided under the policy issued by the Connecticut General Life Insurance Company, and letter dated November 1st, 1929, to the Gulf Oil Corporation of Pennsylvania, agreeing to be bound by the rules governing this insurance, and authorize the Gulf Oil Corporation of Pennsylvania, and/or subsidiary or affiliated companies to deduct and advance necessary amounts per month from my pay to apply towards payment for my premium towards such insurance. I reserve the right to rescind this order in writing at any time. (signed) John Boseman. Witness, W. A. Lay."

Mr. Howell then read to the jury the following instrument secured from the witness, Mr. Gardiner:

"Application dated March 7, 1932, application No. R23558. I hereby apply for Cooperative Group Life Insurance in the amount applicable April 1, 1932, or thereafter, according to my salary classification, and length of continuous service, as provided for in policy No. G-5039-R, issued by the Connecticut General Life Insurance Company, Hartford, Connecticut, and dated April 1, 1932, effective

12:01 A. M., on said date, to the Gulf Oil Corporation of Pennsylvania, of Pittsburgh, Pennsylvania. In making this application, I agree to be bound by the rules governing this insurance, and I authorize the Gulf Oil Corporation of Pennsylvania, and/or subsidiary and/or affiliated companies to deduct in advance the proper amount per month from my pay to apply toward the premium of said insurance. I hereby accept as of March 31, 1932, the cancellation of my insurance protection under policy G-5039— and/or G-5545, and do release any claim thereunder, and I accept in lieu of said insurance protection the benefits granted under said policy G-5039-R. In case claim has heretofore been made by me or is made by me under said policy G-5039 and G-5545 prior to midnight, March 31, 1932, I agree that the above application for insurance is null and void, and any deduction which may have been made from my pay under the above authorization to be returned to me. (signed) by John Boseman. Witness by E. C. Hix.

"Received Certificate No. R-23558, under G-5039-R, signed by John Boseman, on 7/20/32."

(Mr. Gardiner's testimony continued.)

"The record that you have read is part of the permanent records of the Gulf Refining Company. It was the application and payroll deduction order under which John Boseman was issued a certificate under policy G5039R. I do not have

any other payroll deduction order relative to insurance from this man other than that one under group policy G5039R. A certificate was issued to John Boseman upon that application and that certificate was delivered to him at the Gulf Refining Company office in Port Arthur, Jefferson County, Texas. Payroll deductions were made from Boseman's wages at Port Arthur, Texas. I have here the employment record of John Boseman. These records show when he was first employed by the Gulf Refining Company, which date was July 24, 1916. Our records reflect that during the reduction of forces he was laid off on October 8, 1932, from the Gulf Refining Company. Our records reflect that on or about April 29, 1933, he was re-employed by the Gulf Refining Company and worked four and a half hours on the day of the 29th. Our records reflect the reason his employment was not continued was that according to agreement of employees he was to sign a certain release—I don't know what. As to whether or not that was a release of any kind of disability that he might have, well, I am not familiar with those releases. Dr. Long probably has those releases, I hardly think that the employment man there, Mr. Dubose, might have them.

"I have the employment records of John Boseman from March, 1932, up until October, 1932. It reflects that he lost some time from his employment but I can account for all but five days as to

the reason he was off; for this five days, I don't know; for the other days it was his regular days off. We were not operating under the code at that time. They were working forty hours a week, off on Saturdays and Sundays. Our records reflect the type of work that Boseman was doing at the time the employment was terminated, which was work of a laborer in the fire department, I believe. With reference to the collection of premiums and delivery of certificates and making of applications, on all of the employees of the Gulf Refining Company at Port Arthur who qualified under group policy G5039R, all those transactions took place in Port Arthur, Jefferson County, Texas."

Cross Examination by Mr. Cecil.

"John Boseman was laid off on October 8, 1932, at the Gulf Refining Company. I believe he worked on the 7th. I do not have that record. October 8, 1932, was the last day of his employment. Sometime in the latter part of March, 1933, he was reemployed or came back to work and worked four and a half hours. This was on March 29, 1933. I have the record card showing the date of cancellation of Boseman's insurance under policy G5039R. That record reflects the date of cancellation was October 8, 1932, and the amount of the refund was $1.84. By 'amount of refund' I mean the amount of refund on premiums from the 8th to the

31st of October, 1932. Boseman's insurance which he had under group policy G5039R and which was cancelled in October, 1932, was not reinstated in March, 1933, when he worked four and a half hours, nor was he eligible for reinstatement. Our records show that he did not at that time or for that period have any additional certificate. Our records reflect that the reason why Boseman was laid off, discharged or his employment terminated in October, 1932, was just on account of reducing forces. There was at that time a quite general reduction of forces at the Gulf Refining Company in Port Arthur. Our records show the cause of the termination of his employment in October, 1932; he was paid off on account of reducing forces, a permanent lay-off. It was a permanent lay-off. I have charge of the insurance department down there under the auditor. I do not have any communications in regard to this insurance with the Connecticut General Life Insurance Company at Hartford, Connecticut. My communication is with the plant manager at Port Arthur, Mr. Stevenson. My department, the one of which I am head, at the request of the employees who are insured under this policy, when they come to me with reference to questions about that, I attempt at their instance and request to find out the answers and inform them of anything that they might want to know. I do that at the request of the employees who are insured and not at the

request of the Connecticut General Life Insurance Company. The records concerning the work done by Boseman for a period of six or seven months before he was laid off in the reduction of forces reflects he worked substantially the same number of hours and the same amount of time as the other employees in his particular line of work —with the exception of the four days he worked full time."

Re-Direct Examination by Mr. Howell.

"The records I have here are made in two parts, and they are taken from a memorandum and the typist in the accounting department typed this on the front part of these records. These are taken from the original insurance, this is the original insurance policy. As to what that was taken from, it was taken from his employment card, which is the original of his employment card. As to how long John Boseman remained in the employ or on the rolls of the Gulf Refining Company after October 8, 1932, I will state he was dropped immediately. The Connecticut General Life Insurance Company was notified that John Boseman was dropped from the rolls about the 12th day of the following month."

Re-Cross Examination by Mr. Cecil.

"After John Boseman was dropped from the rolls and his employment was terminated in the

early part of October, 1932, our records do not reflect that any payroll deductions were made or any money paid by this man into our office covering any premium on policy G5039R at any time thereafter."

Mr. Howell: "Do your records reflect that the Connecticut General Life Insurance Company ever made, ever returned to the Gulf Refining Company any premiums on John Boseman for any period of time?"

Mr. Gardiner: "That our company returned to—"

Mr. Howell: "No, that the Connecticut General Life Insurance Company returned to you on premiums paid by John Boseman."

Mr. Gardiner: "He was refunded $1.84 at the time he was paid off."

Mr. Howell: "And that is all?"

Mr. Gardiner: "Yes."

Mr. Cecil: "By whom was that refund made?"

Mr. Gardiner: "It was made by Gulf Refining Company."

Witness excused.

JOHN BOSEMAN, plaintiff, being called as a witness on behalf of himself, and having first been duly sworn, testified as follows, and only as follows, upon the issues material:

Direct Examination by Mr. Howell.

"I live at 916 Dunbar Street, Port Arthur. I went to school about three months, but while

there I learned to read and write very little, though I am able to sign my name and recognize my signature. After I came to Port Arthur the regular work I started doing was at the Gulf Refining Company. I am now 43 years of age. The type of work I went to doing at the Gulf Refining Company was that I was working in the labor gang, toting pipes. I started in 1916. The work I did was just toting pipes and cleaning up around the yards, building levees, rolling wheelbarrows. All the work that I did at the refinery was labor work. In 1918 I was given a policy of insurance with the Gulf Refining Company. This insurance provided for permanent total disability. Then in 1925 I was given an additional policy of insurance upon which I paid part of the money. This second policy also provided for total permanent disability. I kept those policies until on or about April 1, 1932, at which time I was given this certificate here that had been introduced in evidence. As to the other certificates under those other two group policies, I returned them to the Gulf Refining Company, and then, later, was given this one. After I got this certificate at the Gulf Refining Company, I was never given any other insurance through them or through the Connecticut General Life Insurance Company. This is the only policy or certificate I have. When I got that certificate it was delivered to me at the main office of the Gulf Refining Company in Port Arthur, Texas.

After I was delivered this certificate and after I executed the payroll deduction order introduced here yesterday, the Gulf Refining Company commenced to make deductions from my pay each month and these deductions were made at the Gulf Refining Company, Port Arthur, Texas. I signed that payroll deduction order and application for the insurance at the Gulf Refining Company, Port Arthur, Texas.

As to how I felt before I was laid off in 1932, and whether or not I lost any time immediately before then and the reason for my losing such time—I lost time along in 1931, I was feeling bad, pain, misery in my head, and misery up in here, and misery in my back and my knees. That began along in 1931. As time went on I got worser. A week or so before, or a few days before I was laid off in 1932, I lost some time; I lost several days; and don't remember how many days, but I know it was several days. Long before I was laid off in 1932 I would have to get up often at night to urinate. When I was laid off on October 8, 1932, with a general reduction of forces, I don't remember whether that was when they laid off a large number of men down there or not. Mr. Dobbs laid me off, he told me I was being laid off. He is the employment man in the Gulf Refining Company. He laid me off, to my remembrance, around 3 or 4 days after I had been in bed sick.

I did not feel physically able to continue on in my work.

I was recalled for employment at the Gulf Refinery. I was notified to return to work there by Mr. Dobbs, and I reported back to him for work; that was in March, 1933. That was on March 30, 1932, yes, sir, I was already working for the Gulf Refining Company on March 30, 1932. I worked there a few hours. I was not laid off until October 9, 1932. I never did any work at any time during the year 1933 at the Gulf Refining Company; not at any time. I never did report back in 1933, and worked 7½ hours on the 30th day of March, 1932, or 1933; 1932, I think it was. I was laid off on October 8, 1932. I went back to work for the Gulf Refining Company in 1933; that was the following year after I was laid off. I had been working continuously for them up until I was laid off in 1932. In 1933 Mr. Dobbs called me back and put me back to work. He is the employment man at the Gulf Refinery, and the same man who laid me off before. I worked several hours when I was called back; about 4½ or 7 hours, something like that; something between 4½ and 7 hours; I didn't do a full day out there. I reported back to work the following morning and they sent me to the doctor to be examined. The kind of work I did when they called me back in 1933, when I worked 4 or 4½ hours out there, was cleaning up in a boat, down in the hold. I reported

to the Gulf Refining Company doctor for an examination. After he examined me I then reported to another man there. I was not passed for employment; I was again laid off. I did not work any time since that time. I did not work any at all doing any type of work or any kind of work from the time I was laid off in 1932 until I was re-employed in 1933; no more than those several hours out there. I have not done any work of any type or character since that time.

After I was delivered that certificate there, down there at Port Arthur, $2.40 was deducted from my pay check each month. I never received any money from the Gulf Refining Company for the last day I worked there. I have employed attorneys in this case, to-wit, your firm, you and your father, and have agreed to pay you a fee."

Cross Examination by Mr. Cecil.

"Along in June, 1932, I just realized and felt so bad that I felt like and knew I wasn't able to work any more; yes, getting worse and worse. It was at that stage that I felt like I couldn't go on with my work. After that time I worked anyway until the first part of October, 1932, that is, for about 4 more months. I was doing hard manual labor all that time. The work I was doing is hard work. Then I was laid off on account of reduction of forces.

As to my being recalled to work in 1933, no one came to get me, but I went up to Mr. Hobbs and he hired me. I wasn't recalled to work, but I went out there and applied for work, I wanted to get my job back. In March, 1933, I did not go out to the employment office and apply for a job; they called my name. I was out there at the Gulf Refining Company office waiting for employment in March, 1933, and they called my name and I agreed to go back to work. I am familiar with the fact that Dr. Long and the Gulf Refining Company physician examine the new men before they start to work, and I was required to take an examination before I started back to work. I went to Dr. Long, when I started back to work in 1933, and wanted to go back to work, to be examined by him. He examined me and told me to sign something. I did not read it; I couldn't read it, couldn't understand it. As to whether or not I knew that was an instrument stating I had a predisposition to hernia and that I would not attempt to hold the Gulf Refining Company responsible for that condition that was already existing—the man told me that it was for me to sign the paper, and I asked him what it was. He said: 'This is a paper that says you have been operated on.' The paper further stated that on the other side of me was liable to develop into a hernia; liable to come out and kill me any time. As to whether or not the man told me the hernia was liable to kill me, I would say yes, sir; liable to

come down on me. Dr. Long did not tell me that, but the man he sent me to, whose name I don't know, told me that. Dr. Long, after examining me, did not tell me that I could go back to work if I would sign this instrument, which I refused to sign, saying I had a predisposition to hernia, but the other man did tell me that. I wouldn't sign it, and I didn't work any more after that. I was told unless I did sign such acknowledgment I would not be allowed to work at the Gulf Refining Company and I refused to sign it. I didn't work at the Gulf Refining Company since that time. I think it was 4 hours, something like that, I disremember, that I did work on that day before I went to get that employment examination. When I worked at the Gulf Refining Company before I was laid off in the early part of October, 1932, I was paid by the hour. I worked from day to day. I did not have a contract hiring me for 6 months or a year, but I just worked from day to day. I was paid twice a month. As to whether or not quite a few other men were laid off in 1932, I disremember now if they laid off any other men. When I was laid off out there in October, I didn't know I was going back there to work any time soon. I knew I was laid off and I didn't know exactly when I was going back to work, or when there would be an opening for me. I was ready to go back if there was an opening; I was going back to try to work some more. That is the reason I went back there

in March to apply for employment. I went back to try and apply to be re-employed in March, 1933.

As to this certificate I have been asked about (under Group Policy G5039R) it was delivered to me at the Gulf Refining Company at Port Arthur. I do not know who gave it to me, it was given to me at the main office of the Gulf Refining Company at Port Arthur, Texas. I have agreed to pay my attorney a $1,000.00 fee, and that is all I have agreed to pay him.

In June or July, 1932, I told my foreman, Mr. W. A. Lay, that I was feeling bad and I was sick. I did not tell him that I wanted to lay off; but I did lay off when I couldn't work. As to whether or not I told Mr. Lay that I was unable to work—I told him my back was hurting me. I knew I wasn't able to work, but I was trying to do it. I did not tell Mr. Lay or anybody else I was unable to do my work. I went ahead and worked without complaint to the Gulf Refining Company or this insurance company until I was laid off in October, 1932; and then I applied for re-employment in March, 1933.

After I was laid off in October, 1932, I did not continue to pay any premium on this policy of insurance or this certificate that has been offered in evidence. I did not in October, 1932, write a letter notifying the insurance company that I was unable to work. I didn't say anything to them. The first time that I ever notified this insurance

company, or claimed I was unable to work, was through my lawyers, Howell & Howell, in April of 1933. I knew all during this time that I had this insurance.

As to how many times I have tried to cut wood around my house since I was laid off in October, 1932, I never did try to cut wood around the house —I was unable to and never did even try. I can read a letter. I can read now."

Re-Direct Examination by Mr. Howell.

"I do not know what is meant by 'to make application or apply.' As to why I happened to go out to the Gulf Refining Company on the morning that my employment was given back to me out there, I went out there to try to work. As to whether or not any one told me to come out, they said they were hiring men and were calling the names. I went out there and they called my name, and then I went in. I remember that instrument, Mr. Cecil asked me about, which stated I was physically able to do any and all work, and which I refused to sign. As to whether or not they told me that paper said on it that I agreed and stated that I was able to do my work as well as I always had, and could and would do any work that might be given to me, I would say no, sir, not that I know of. He did not tell me that."

Re-Cross Examination by Mr. Cecil.

"About my going back to the Gulf in 1933, I heard around Port Arthur that they were hiring men out at the refinery and I wanted to go back to work. I knew that the refinery would hire the old men that they had previously employed in preference to strangers. When I heard that they were putting men to work I wanted to go back to work and I went out there myself on my own free will. I showed up at the Gulf Refining Company and asked for a job. When they called my name I told them I wanted to go to work."

DR. F. W. SUTTON was then called as a witness on behalf of the plaintiff, and having been duly sworn, testified as follows:

"I am a duly licensed and qualified practicing physician, and I examined John Boseman approximately four or five times, the first examination being made on April 25, 1933, and from time to time thereafter until the date of the trial. Such examinations reveal that he is suffering from syphilis, chronic bronchitis and diabetes, and his condition is progressively worse, and from the examinations, he is unable to do any work requiring muscular effort and physical exertion, and such condition is a permanent one, and the disease of diabetes is incurable, and he is suffering from a general weakness as well as the other conditions

and in my opinion he is permanently and totally disabled and such condition of permanent total disability has been present since on and prior to October 8, 1932."

MR. D. C. MARCUS was then called as a witness for the plaintiff, and having been duly sworn, testified as follows, after having been admitted by counsel that he was a duly qualified and licensed attorney:

Direct Examination by Mr. Howell.

"In the practice of my profession I have had occasion to handle cases involving insurance policies both for the plaintiff and the defendant. My practice has been confined mostly to the defense of such policies, rather than the collection. In answer to your question, assuming a case against Connecticut General Life Insurance Company upon a policy of insurance, the amount of which is $4,000.00, taking into consideration the preparation for trial, together with the institution of suit, the trial of the case, the possibilities of an appeal, I would state that in my opinion $1,000.00 would be a reasonable fee for the prosecution of such claims."

Cross Examination by Mr. Cecil.

"I have not prosecuted any suits on group life policies. I have never been chief counsel in one. I have never tried a single one."

Re-Direct Examination by Mr. Howell.

"There is no distinction between those and other policies. I think I am familiar with the amount of work to be done in these cases."

Witness excused.

The plaintiff then offered in evidence certain portions of the testimony given by JOHN M. LAIRD of Hartford, Connecticut, given in answer to direct interrogatories propounded by the defendant in this case and certain testimony given by the same witness in such deposition to cross interrogatories propounded by the plaintiff; said deposition having been taken in Hartford, Connecticut, on a commission for such duly issued out of this court, and sworn to by said witness on November 3, 1934.

The plaintiff offered the following testimony of such witness in answer to direct interrogatories:

"My name is John M. Laird; I am fifty years old and live at Hartford, Connecticut. I am vice-president of the Connecticut General Life Insurance Company. I have been connected with such company for almost twenty-five years. In 1918, I was actuary of such company. Since 1918, I have served as actuary, as secretary of the company and as vice-president of the Connecticut General Life Insurance Company, the position I now hold."

The plaintiff then offered the following testimony of such witness, from such deposition, given in answer to cross interrogatories:

"With reference to whether or not it was the intention of the Connecticut General Life Insurance Company to insure the employees of the Gulf Refining Company at Port Arthur, Texas, under such policy provided such employees complied with the terms and conditions contained therein, I will state it was the intention of the Connecticut General Life Insurance Company to insure all employees of the Gulf Oil Corporation of Pennsylvania and affiliated and subsidiary companies wherever located. Some of the employees of the Gulf Refining Company at Port Arthur, Texas, were insured under policy G5039R. As to whether or not the Connecticut General Life Insurance Company gave to the Gulf Oil Corporation or the Gulf Refining Company any authority to cancel any certificate issued under group policy G5039R, prior to the cancellation of policy G5039R, so long as the holder of such certificate was an employee of the Gulf Refining Company or the Gulf Oil Corporation, I will state the Gulf Oil Corporation of Pennsylvania, the assured under this policy, had such authority in this connection, if any, as was given to it by the terms of the policy. It had authority to terminate employment and this automatically terminated insurance. The Gulf Refining Company at Port Arthur, Texas, had no authority from the Connecticut General Life Insurance Company to pay any claim or to release any claim or to secure release of any claim under

group policy G5039R, either as agent for, or acting for the Connecticut General Life Insurance Company. As to whether or not the Connecticut General Life Insurance Company knew at the time it was issuing such certificates covering employees of the Gulf Refining Company at Port Arthur, Texas, that such certificates would be delivered to such employees at Port Arthur, Texas—the Connecticut General Life Insurance Company did not issue certificates to the employees of the Gulf Refining Company at Port Arthur, but, on the other hand, did as its policy required, and issued these certificates to the Gulf Oil Corporation of Pennsylvania, the assured under the policy. The certificates were sent from Hartford, Connecticut, to the Gulf Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania. I don't know whether the Connecticut General Life Insurance Company knew that at the time it issued a certificate to John Boseman that such certificate would be delivered to him at Port Arthur, Texas. As to whether or not it was the intention of the Connecticut General Life Insurance Company that the certificates issued to the employees of the Gulf Refining Company at Port Arthur, Texas, were to be delivered to such employees at that place, I will state it was the intention of the Connecticut General Life Insurance Company to carry out the terms of the policy regarding the issuance and delivery of the certificates. The terms of the policy required the

issuance and delivery of the certificates to the assured employer, the Gulf Oil Corporation of Pennsylvania. It did this. I don't know that the premiums paid by the Connecticut General Life Insurance Company were paid by assessing, as predicated upon a wage scale, employees of the Gulf Oil Corporation and/or subsidiary and/or affiliated companies and thereafter in turn paid to the Connecticut General Life Insurance Company. The Connecticut General Life Insurance Company did not require a physical examination of any employee of the Gulf Refining Company, or any statement of such employee of the Gulf Refining Company prior to the issuance to such employee of insurance under policy G5039R. I believe the premium charged under policy G5039R was something less than one dollar per month per thousand insurance when the policy was issued, but the rate was later increased to something over one dollar per month per one thousand insurance. The Connecticut General Life Insurance Company did not authorize the Gulf Oil Corporation or the Gulf Refining Company, or any employee, agent or official of either of said companies to procure for the Connecticut General Life Insurance Company a release from John Boseman of any and all claims that he might have under policy G5039R. The attorneys in Beaumont, Texas, for the Connecticut General Life Insurance Company are Messrs. Orgain, Carroll & Bell and Messrs. Barnes &

Barnes. I have never discussed this case with the attorneys for our company. I have never conveyed to such attorneys any recommendations or any information that I have available with reference to this case. I have not heretofore advised them that John Boseman never at any time executed a release in favor of the Connecticut General Life Insurance Company, of any and all claims that he might have under the certificate issued to him under policy G5039R. I have not heretofore conveyed to the company's attorneys any information concerning the claim of John Boseman, though there has been certain correspondence between the claim department and Messrs. Orgain, Carroll & Bell, in reference to this case, but I have not participated in it. The Connecticut General Life Insurance Company makes no distinction between the insurance it issues to negroes from the insurance it issues to persons of other races under group policy G5039R. I am not sure as to whether the Connecticut General Life Insurance Company has refused in the past any insurance from a negro by reason of the fact that he was a negro, although I know that applications for insurance on the lives of negroes are underwritten with more care than other applications. I don't know as to whether or not the Connecticut General Life Insurance Company desires to write insurance on the people of Texas. I don't know that the reason the Connecticut General Life Insurance Company

does not desire to engage in business within the State of Texas is that it believes that the laws of Texas are too harsh and stringent to permit it to operate—I don't know such."

Cross interrogatory No. 4 (by plaintiff):

"Did the Connecticut General Life Insurance Company recognize, authorize and honor any and all transactions that the Gulf Refining Company or the Gulf Oil Corporation made and had between the Gulf Refining Company or the Gulf Oil Corporation and its employees, with reference to the issuance, delivery, cancellation, extension and reinstatement of the employees' insurance under group policy G5039R, as agents for or in behalf of Connecticut General Life Insurance Company?

(a) Has it done so in the past?"

Mr. Laird (answer to cross interrogatory No. 4):

"The Connecticut General Life Insurance Company did honor such transactions of the Gulf Oil Corporation of Pennsylvania or affiliated or subsidiary companies in this connection as were in accordance with the terms of the policy.

(a) The practice referred to just above has been in force in the past."

Mr. Howell: "Now, we next offer in evidence part of the interrogatories propounded to Thomas A. Tully of Hartford, Connecticut, a witness for

the defendant, and who is an employee of the Connecticut General Life Insurance Company."

The plaintiff then offered direct interrogatories directed to MR. THOMAS A. TULLY and his answers to same upon a commission duly issued out of this court for such, after being duly sworn, which testimony was as follows:

"My name is Thomas A. Tully; I was born in 1899 and I live in East Hartford, Connecticut. I am employed in the group department of the Connecticut General Life Insurance Company and have charge of the records pertaining to group insurance and have been employed by such company since 1920. I am now chief clerk of the group department of the Connecticut General Life Insurance Company and have held this position since 1930. I have had access to the records of the Connecticut General Life Insurance Company since my employment with that company commenced in 1920, and since 1930, I have had general supervision over these records, as well as access to them. The Connecticut General Life Insurance Company received on March 7, 1934, from Howell & Howell, or John Boseman, or someone else, a so-called proof of total and permanent disability, the other side of which document contained an attending physician's statement. The attending physician's statement was signed March 1, 1934, but the other side of this document bore the date

of April 25, 1933. The Connecticut General Life Insurance Company received notice of a claim by or for John Boseman in the form of a copy of a letter dated April 12, 1933, from Messrs. Howell & Howell, which was received by the Connecticut General Life Insurance Company on May 22, 1933."

In answer to the cross interrogatories offered by the plaintiff, the witness in such deposition testified:

"The plaintiff, John Boseman, was insured under policy G5039R. His insurance commenced under such policy on April 1, 1932; and his insurance under such policy was terminated by the Connecticut General Life Insurance Company on October 8, 1932. I am unable to prepare a complete and detailed account of all the premiums paid by the Gulf Oil Corporation of Pennsylvania to the Connecticut General Life Insurance Company on policy G5039R from the time that the policy was issued to the date of the cancellation, showing premiums collected, refund of premiums, premium adjustments, assessments, how and when made, as requested by you (plaintiff) because the preparation of such would require the expenditure of considerable sums and no funds have been supplied to me by anyone for this purpose. For the same reason I am unable to attach a copy of the records of the Connecticut General Life Insurance Company showing the payment of all claims paid to persons living within the State

of Texas under group policy G5039R from the time that the policy was issued to the date of its cancellation, as requested by you (plaintiff). A premium charge on account of the insurance of John Boseman was made by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania, and this was paid. This charge was made and received during each month from April through December, 1932, although the charge for the period after the insurance terminated on October 8, 1932, had to be refunded, as required by the policy. The first premium charge was received about April 15, 1932, and thereafter about the first of each month. These premiums were paid by the Gulf Oil Corporation of Pennsylvania. The amount of same was three ($3.00) dollars per month. The last premium which Connecticut General Life Insurance Company had a right to retain was for the period ending October 8, 1932, although, as I have explained, a premium charge was made and refunded for the period through December of 1932. I do not know, as you ask me, if premiums under this policy were paid by John Boseman executing a payroll deduction order to the Gulf Refining Company at Port Arthur, Texas, and that the Gulf Refining Company every two weeks made such deductions insomuch as the Connecticut General Life Insurance Company keeps no records in this connection and is not concerned with any such deductions.

As to whether or not our records reflect that the Connecticut General Life Insurance Company has any insurance in effect, either group, health, life, accident or any other form of insurance in Texas, other than such insurance it carried on the employees of the Gulf Refining Company between March 31, 1932, and the 1st day of April, 1933—yes, many of the former policyholders of the Connecticut General Life Insurance Company have moved to Texas and it has this insurance. I am unable to attach policy G5039R for the reason that this policy is in the possession of the Gulf Oil Corporation of Pennsylvania, the assured, to whom it was issued. I am unable to attach a photostatic copy of the policy because of the expense involved and no funds have been supplied to me for this purpose. Our attorneys, Messrs. Orgain, Carroll & Bell have, however, been authorized to procure a copy of this policy for use in this suit. I am unable to attach a copy of the records of the Connecticut General Life Insurance Company showing the amount of premiums paid by the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies from March 31, 1932, to April 1, 1933, upon group policy G5039R, for the reason that the preparation of such would require the expenditure of considerable sums and funds have not been supplied to me for this purpose; most of the records so far as they pertain to John Boseman have been attached.

"I am unable to attach copy of the records of the Connecticut General Life Insurance Company showing the amount of money paid out on the claims under policy G5039R from March 31, 1932, to April 1, 1933, for the reason that the preparation of such would require the expenditure of considerable sums and funds have not been supplied to me for this purpose. Claims arising under group policy G5039R were paid by the Connecticut General Life Insurance Company mailing a check made out to the proper person from the home office of the Connecticut General Life Insurance Company to the home office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania. I assume that such checks were in turn delivered to such employees or their beneficiaries who lived in Port Arthur, Texas. Our records reflect that the Gulf Refining Company was a subsidiary or affiliated company of the Gulf Oil Corporation of Pennsylvania, which employees of the Gulf Refining Company were eligible for insurance under policy G5039R from March 31, 1932, to April 1, 1933. As to whether or not our records reflect that any certificates of insurance issued to the employees of the Gulf Refining Company under policy G5039R were delivered to such employees in Port Arthur, Texas, between March 31, 1932 and April 1, 1933, I will state the connection of the Connecticut General Life Insurance Company with these certificates ceased with their delivery to the assured, the Gulf

Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania. The Connecticut General Life Insurance Company keeps no records in connection with any delivery, it is not concerned with such. The Connecticut General Life Insurance Company has no release that I know of from John Boseman of any and all claims that he might have under policy G5039R."

(The foregoing testimony of Mr. Tully offered by plaintiff was taken in Hartford, Connecticut, and sworn to by such witness on November 3, 1934.)

Mr. Howell (on behalf of the plaintiff): "We rest Your Honor."

TESTIMONY OFFERED BY THE DEFENDANT.

The defendant then offered in evidence, the remaining testimony given by JOHN M. LAIRD of Hartford, Connecticut, and sworn to on November 3, 1934, in answer to direct interrogatories propounded by the defendant.

(Testimony concerning group policies G5039 and G5545, and the insurance thereunder, canceled March 31, 1932.)

"I assisted other agents and representatives of the Connecticut General Life Insurance Company in connection with the negotiations for the issuance of group policy G5039, dated as of November 12, 1918. I also assisted other agents and representatives of the Connecticut General Life

Insurance Company in connection with the negotiations for the issuance of group policy G5545, issued in 1925 and dated as of April 1, 1925. Both of these policies were issued on their respective dates, by the Connecticut General Life Insurance Company of Hartford, Connecticut, to the Gulf Oil Corporation of Pennsylvania, which policies were known as policies of group insurance on the Gulf Oil Corporation of Pennsylvania, and its subsidiary and/or affiliated companies. I dealt with the Gulf Oil Corporation of Pennsylvania (in 1918, at the time of the issuance of group policy G5039, the name was then Gulf Oil Corporation). The negotiations for each of those contracts were had and took place in Hartford, Connecticut, and in Pittsburgh, Pennsylvania. The home office of the assured, The Gulf Oil Corporation of Pennsylvania, is Frick Building Annex, Pittsburgh, Pennsylvania. The final agreements between the Connecticut General Life Insurance Company and the Gulf Oil Corporation of Pennsylvania for the issuance of each of said group policies, to-wit, G5039 and G5545, were reached in Pennsylvania. The written applications for the issuance of each of said policies were signed by the Gulf Oil Corporation in Pennsylvania, and each of said applications was delivered by the Gulf Oil Corporation of Pennsylvania to the Connecticut General Life Insurance Company at Pittsburgh, Pennsylvania. Policy G5039 and policy G5545, were each and both

signed and executed, on their respective dates, by the Connecticut General Life Insurance Company at Hartford, Connecticut. Each of such policies was delivered to the Gulf Oil Corporation of Pennsylvania in the City of Pittsburgh, Pennsylvania, by representatives of the Connecticut General Life Insurance Company. None of the negotiations for either of said policies, to-wit, G5039 and G5545, or any of the acts in the execution and delivery of either of said policies from the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania, took place in any state other than Connecticut and Pennsylvania. There were three amendments to policy G5039 prior to March 31, 1932, and there were two amendments to policy G5545 prior to March 31, 1932. The applications or requests for each of these amendments came from the Gulf Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania.

Group policy G5039 and group policy G5545, each and both, were on March 31, 1932, lapsed and canceled. All individual coverage which was in force under these policies, and each of them, on March 31, 1932, necessarily ceased on that date when the policies were canceled. The insurance on many employees was, of course, canceled in accordance with the terms of the policies prior to March 31, 1932. Policies G5039 and G5545 ceased to be effective on March 31, 1932, and were terminated at that time upon the request of the as-

sured thereunder, the Gulf Oil Corporation of Pennsylvania. No premiums were received by the Connecticut General Life Insurance Company covering an employee's insurance under either of said group policies, to-wit G5039 and G5545, for any period after March 31, 1932; and neither of said group policies was in force and effect for any purpose after that date. The agreement for the cancellation of these policies was made by the Gulf Oil Corporation of Pennsylvania, and application for such cancellations, coming from the Gulf Oil Corporation of Pennsylvania, were received prior to March 31, 1932.

The Gulf Oil Corporation of Pennsylvania was charged by the Connecticut General Life Insurance Company with all premiums accruing under policies G5039 and G5545, and the insurance thereunder, and such oil corporation paid all premiums received by the Connecticut General Life Insurance Company under these policies. These premiums were paid either at Pittsburgh, Pennsylvania or Hartford, Connecticut. The Connecticut General Life Insurance Company did not exercise any control or direction as to the source or persons from whom the Gulf Oil Corporation of Pennsylvania and its subsidiary companies secured the funds or premiums, which were paid upon policies G5039 and G5545 and the insurance thereunder. From time to time refunds were made by the Connecticut General Life Insurance Company for

unearned premiums upon the individual insurance under group policy G5039, as well as group policy G5545—that is, when an employee's insurance under either or both of said policies had been canceled, such refunds were made to the Gulf Oil Corporation of Pennsylvania. The Connecticut General Life Insurance Company has never dealt and does not now deal with any of the employees of the Gulf Oil Corporation or of its subsidiary companies that may have been insured under group policy G5039 and G5545, or either of them, either with reference to such insurance, or with reference to the issuance of certificates, or with reference to the premiums due on the insurance evidenced by said certificate, or with reference to claims arising under said policies; these dealings were and are with the Gulf Oil Corporation of Pennsylvania, and not with the individual employees. The Connecticut General Life Insurance Company from time to time, issued certificates and increases of certificates evidencing an employee's insurance under said group policy G5039, and also did the same with reference to an employee's insurance under group policy G5545. These certificates and increase notices were, in practice, sent to the home office of the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania. These certificates were issued upon notice in writing from the Gulf Oil Corporation of Pennsylvania, and these certificates were sent from

Hartford, Connecticut, when they were issued, to the office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, where the connection of the Connecticut General Life Insurance Company with them ceased. This practice was well established. Claims arising under group policy G5039 and group policy G5545, or either of them, were and are paid by the Connecticut General Life Insurance Company by mailing a check from its home office in Hartford, Connecticut, made out to the proper person, to the home office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania.

The Connecticut General Life Insurance Company has never authorized the Gulf Refining Company at Port Arthur, Texas, nor Charles R. Stevenson of Port Arthur, Texas, nor W. J. Steck of Port Arthur, Texas, nor any officer or employee of the Gulf Refining Company, nor the Gulf Oil Corporation of Pennsylvania, nor any official or employee of such corporation, either in writing or otherwise, to in any way represent the Connecticut General Life Insurance Company or bind it concerning policies G5039 and G5545, or either of them, or any insurance under same or either of same, or any matter pertaining thereto. Neither the Gulf Refining Company at Port Arthur, Texas, nor Charles R. Stevenson, nor W. J. Steck, the latter two of Port Arthur, Texas, nor any officer or employee of the Gulf Refining Company, nor

the Gulf Oil Corporation of Pennsylvania, nor any official or employee of such corporation, has ever, at any time, with the knowledge, consent or permission of the Connecticut General Life Insurance Company, represented or acted for such insurance company with reference to any matter pertaining to policies G5039 and G5545, or either of them, on any employee's insurance thereunder, or any matter pertaining thereto. The Connecticut General Life Insurance Company did not exercise any control or direction over the Gulf Oil Corporation of Pennsylvania concerning the mode and manner in which it handled said certificates and certificates of increase issued under group policy G5039 and group policy G5545, after such certificates were delivered to said company at Pittsburgh, Pennsylvania, by the Connecticut General Life Insurance Company. The insurance company did not require the Gulf Oil Corporation of Pennsylvania or anyone else to surrender to such insurance company an employee's certificate prior to the entry upon the records of the insurance company of the cancellation of an employee's insurance under policies G5039 and G5545, either or both, as these certificates were merely memoranda showing some of the terms of the policies and not part of the contracts. The Connecticut General Life Insurance Company treated an employee's insurance as becoming effective under such group policies, and such insurance did become effective, on the date

shown by the notices received from the Gulf Oil Corporation of Pennsylvania, which notices stated the date that such employee had become insured under such policies, either or both. Premiums were paid by the Gulf Oil Corporation of Pennsylvania upon an employee insured under such group policies G5039 and G5545, or the respective premiums for insurance under either of said policies, for the period commencing upon the date shown by the notice received from such oil corporation, giving the date upon which the employee had become insured under such policies, or either of them. Cancellation of an employee's insurance under either group policy G5039 or group policy G5545 was entered by the Connecticut General Life Insurance Company upon its records showing such cancellation effective as of the date the insurance had been terminated, to-wit, the date stated by the notice from the Gulf Oil Corporation of Pennsylvania, as the date of termination. Refunds were made by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania upon the canceled insurance of an employee for all periods after the date such notice from the Gulf Oil Corporation of Pennsylvania stated that the employee's insurance had been terminated.

Employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary and its affiliated companies insured under said policies, or either of them, were, while insured, located in various

states in the Union, and such insured employees were often transferred from one state to another in the Union with their insurance under such policies G5039 and G5545 remaining in force and effect. At various times, when employees of the Gulf Oil Corporation of Pennsylvania, or the employees of its affiliated or its subsidiary companies, have sought to present a claim under either group policy G5039 or group policy G5545 direct to the Connecticut General Life Insurance Company, such company has instructed such employees to take the matter up through their employer, which employer, under these policies, was and is the Gulf Oil Corporation of Pennsylvania. This was done for the reason that all dealings with employees, in connection with these policies, are, in practice, carried on through the Gulf Oil Corporation of Pennsylvania, at its Pittsburgh, Pennsylvania, office.

"The only group policy of insurance by the number of G5039 that the Connecticut General Life Insurance Company ever had in force and effect was that hereinbefore described, having been issued on March 12, 1918, to the Gulf Oil Corporation, and the only group policy No. G5545 that such company ever had in force was that one hereinbefore described, being issued on April 1, 1925, to the same corporation. On March 15, 1932, in connection with an application for group policy G5039R and in the same instrument, the Gulf Oil

Corporation made a request or application to the Connecticut General Life Insurance Company for the cancellation of both group policies G5039 and G5545, and a copy of this application is attached to group policy G5039R. This application for the cancellation of said two group policies was made and signed in Pennsylvania and was delivered in the same state by the Gulf Oil Corporation of Pennsylvania to the representatives of the Connecticut General Life Insurance Company. This application requested that said two group policies be canceled midnight March 31, 1932. This application was acted upon and accepted by the Connecticut General Life Insurance Company on or about March 15, 1932.

(Group Contract G5039R in Effect April 1, 1932, to April 30, 1933.)

"Prior to April 1, 1932, the Gulf Oil Corporation of Pennsylvania made application to the Connecticut General Life Insurance Company for the issuance to it of a new group policy of insurance to be known as 'G5039R.' The request for the issuance of such new group policy was made in the same instrument as the request for the cancellation of policies G5039 and G5545. I assisted and advised on behalf of the Connecticut General Life Insurance Company in connection with the negotiations and transactions concerning the cancellation of group policies G5039 and G5545, and

I also assisted and advised on behalf of the same company in connection with the application for the negotiations and transactions concerning the issuance and delivery of policy G5039R. My dealings were with the Gulf Oil Corporation of Pennsylvania and in so dealing I acted through representatives of the Connecticut General Life Insurance Company. The negotiations for group contract G5039R were had with the Gulf Oil Corporation of Pennsylvania and took place in Pittsburgh, Pennsylvania, the home office of our assured the Gulf Oil Corporation of Pennsylvania being in that city. The final agreement was reached in Pittsburgh, Pennsylvania, by the Connecticut General Life Insurance Company and the Gulf Oil Corporation of Pennsylvania for the execution and delivery of group policy G5039R; the application for such policy was signed by the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, and said written application was by the Gulf Oil Corporation delivered to the representatives of the Connecticut General Life Insurance Company in the same city; policy G5039R was signed and executed by the Connecticut General Life Insurance Company in Hartford, Connecticut, and said policy was thereafter delivered to the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, by an agent or representative of the Connecticut General Life Insurance Company. The policy became effective as of April 1,

1932. None of the negotiations for said policy G5039R and none of the acts in the execution and delivery of said policy took place in any state other than Connecticut and Pennsylvania. The Gulf Oil Corporation of Pennsylvania was charged with all premiums upon policy No. G5039R and all insurance thereunder, and that oil corporation paid all of such premiums to the Connecticut General Life Insurance Company. These payments were made by mailing a check from the home office of the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, to the home office of the Connecticut General Life Insurance Company at Hartford, Connecticut. The Connecticut General Life Insurance Company exercised no control or direction as to the source or persons from whom the Gulf Oil Corporation of Pennsylvania and its subsidiary companies secured the funds or premiums which were paid upon policy G5039R and the insurance thereunder to the Connecticut General Life Insurance Company. From time to time refunds were made by my company to the Gulf Oil Corporation of Pennsylvania for unearned premiums upon the insurance under group policy G5039R, when an employee's insurance had been canceled. The Connecticut General Life Insurance Company has not dealt and does not now deal with any of the employees of the Gulf Oil Corporation, or any of the employees of its subsidiary companies, with reference to in-

surance under group policy No. G5039R, or the issuance of certificates, or the premiums due on the insurance evidenced by such certificates, or the claims arising under said policy, but its dealings were and are with the Gulf Oil Corporation of Pennsylvania, its assured.

"The Connecticut General Life Insurance Company, from time to time issued certificates and increases of certificates, evidencing an employee's insurance under said group policy No. G5039R. These certificates and increases of certificates, when issued were by the Connecticut General Life Insurance Company delivered to the home office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh. The Gulf Oil Corporation of Pennsylvania gave notice or notices to my company for the issuance of such certificates under such policy. The notices coming to my company for the issuance of certificates under [redacted]p policy G5039R and the place of delivery of [redacted] certificates when so issued and the party to whom such certificates were so delivered were the same concerning and respecting each and all of the certificates and each and all of the certificates of increase issued by the Connecticut General Life Insurance Company under such policy; this practice was well established. Claims arising under this policy were and are paid by the Connecticut General Life Insurance Company mailing its check made out to the proper person from the home office of the

Connecticut General Life Insurance Company in Hartford, Connecticut, to the home office of the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania. The Connecticut General Life Insurance Company has never authorized the Gulf Refining Company at Port Arthur, Texas, or Charles R. Stevenson of Port Arthur, Texas, or W. J. Steck of Port Arthur, Texas, or the Gulf Oil Corporation of Pennsylvania, or any official or employee of said corporation, in writing or otherwise, to in any way represent or bind it concerning policy G5039R, or any insurance thereunder, or any matter pertaining thereto; and neither of said corporations, or the employees or officials of either, or Charles R. Stevenson, or W. J. Steck has ever represented the Connecticut General Life Insurance Company in any way, with the knowledge, consent or permission of such insurance company concerning group policy G5039R and the insurance thereunder, and the matters pertaining thereto. The Connecticut General Life Insurance Company exercised no control or direction over the Gulf Oil Corporation of Pennsylvania concerning the mode and manner in which it delivered said certificates and certificates of increase under said policy, after same were delivered to such company at Pittsburgh, Pennsylvania by the Connecticut General Life Insurance Company. The Connecticut General Life Insurance Company did not customarily require the

surrender of an employee's certificate, prior to the entry upon the records of the Connecticut General Life Insurance Company of the cancellation of an employee's insurance under such policy for the reason that the certificate was not part of the contract of insurance, but only a memorandum of the insurance coverage which the employee had under policy G5039R. The Connecticut General Life Insurance Company treated an employee's insurance as becoming effective under such group insurance policy on the date shown by the notice received from the Gulf Oil Corporation of Pennsylvania, which notice stated the actual date that such insurance had become effective. Premuims were paid by the Gulf Oil Corporation of Pennsylvania upon an employee insured under group policy G5039R for the period commencing upon the date that the notice from such Oil Corporation stated as the date upon which such employee had become insured. An employee's insurance under group policy G5039R was treated, upon the records of the Connecticut General Life Insurance Company as having terminated on the date that the notice from the Gulf Oil Corporation of Pennsylvania actually stated it had been terminated. Refunds were made by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania upon the cancelled insurance of an employee from the

period that the notice from the Gulf Oil Corporation of Pennsylvania stated that the employee's insurance had terminated. The employees insured under this policy were and are located in various states of the Union and in foreign countries. These employees were transferred on occasions from one state to another in the Union with their insurance remaining in full force and effect under group contract G5039R, notwithstanding. Employees of the Gulf Oil Corporation of Pennsylvania and of its affiliated and of its subsidiary companies have been instructed to take up claims under group contract G5039R through the employer, the employer under this policy being the Gulf Oil Corporation of Pennsylvania. This is done for the reason that all dealings in connection with this policy are with the Gulf Oil Corporation of Pennsylvania. The Connecticut General Life Insurance Company has never had in force a group contract No. G5039R other than that bearing date April 1, 1932, issued to the Gulf Oil Corporation of Pennsylvania and subsidiary and/or affiliated companies, and this was the only group policy in force and effect between April 1, 1932, and April 30, 1933, covering the Gulf Oil Corporation of Pennsylvania and affiliated and/or subsidiary companies.

"The Connecticut General Life Insurance Company was not writing contracts of disability,

life, or group insurance in the State of Texas either in 1918, or in 1925, or in 1932. The Connecticut General Life Insurance Company was not, in 1917, writing any contracts of life, disability or group insurance in the State of Texas, and has not done such at any time since that date. The Connecticut General Life Insurance Company did not have in the year 1917 and has not had at any time since that date, any agent or agents qualified to write life, disability or group insurance in the State of Texas, and the Connecticut General Life Insurance Company did not have in 1917 and has not had at any time since said date an agent or agents authorized by it to write insurance or make insurance contracts of any character in the State of Texas. The Connecticut General Life Insurance Company has a permit to do business in Texas, but it has not qualified to write policies of insurance in that state because it has no licensed insurance agents there, pays no premium taxes to Texas and for other reasons. The Connecticut General Life Insurance Company has not at any time accepted an application for insurance coming from or originating in the State of Texas, but such applications were uniformly declined. The Connecticut General Life Insurance Company has never written or delivered a contract or policy of insurance of any kind or character in the State of Texas.

"The Connecticut General Life Insurance Company is incorporated under the laws of the State of Connecticut and its home office has always been in Hartford, Connecticut. The Gulf Oil Corporation of Pennsylvania is incorporated under the laws of the Commonwealth of Pennsylvania and its home office is in Pittsburgh, Pennsylvania. The Connecticut General Life Insurance Company has not at any time since 1917 had a president, vice president, secretary or assistant secretary residing or located in the State of Texas. In connection with group policies G5039, G5545 and G5039R, and the employees' insurance under same, and each of same, and all matters pertaining to same, and each of same, including the notice to the Connecticut General Life Insurance Company for certificates, the issuance and delivery of certificates, the collection of premiums, the notice that an employee had become insured under said policies, and the notice that an employee's insurance under said policies, and each of them, had terminated, the Connecticut General Life Insurance Company did not deal with any of the affiliated or subsidiary companies of the Gulf Oil Corporation of Pennsylvania. The dealings were all had with the Gulf Oil Corporation of Pennsylvania, acting principally through Mr. H. J. Smith, who is assistant treasurer in charge of insurance for the Gulf Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania."

The defendant then offered in evidence the testimony given, after being duly sworn, on November 3, 1934, on a commission issued out of this court, by MR. THOMAS A. TULLY, in answer to direct interrogatories propounded by the defendant:

"I have had in the past some connection with the handling of the employees' insurance, the certificate evidencing such insurance, and premiums under group policy known as G5039, issued in 1918; I have also had some connection with the same matters under and pertaining to group policy G5545, issued in 1925. Since 1930 I have had access to and general supervision over the permanent records of the Connecticut General Life Insurance Company pertaining to these policies, which records pertain to the handling of the employees' insurance, the certificates evidencing such, premium collections, premium refunds, as well as the cancellation of employees' insurance under such two group policies. I am now familiar with, and have the custody of the permanent records of the Connecticut General Life Insurance Company pertaining to such matters; such policy records relating to such matters, of the Connecticut General Life Insurance Company, were properly and actively kept in due course of business of such insurance company and truthfully reflect the facts as shown in such; such records since made have been continuously used and accepted by my company, as well as the Gulf Oil Corpora-

tion of Pennsylvania, as a basis of determining the commencement of an employee's insurance, the amount of such, the termination of such, and the premiums paid by the Gulf Oil Corporation to my company upon such. All premiums which the Connecticut General Life Insurance Company receive on account of insurance in force under such two policies were received from the Gulf Oil Corporation of Pennsylvania, formerly the Gulf Oil Corporation, and were paid to my company monthly in advance. These premiums were calculated upon the number of employees then insured thereunder and the respective amount of such employees' insurance. The Connecticut General Life Insurance Company never received and retained any premium upon any employee's insurance under either group policies G5039 or G5545 for any period after midnight of March 31, 1932. I am familiar with the records of the Connecticut General Life Insurance Company pertaining to the insurance under group policies G5039 and G5545, and particularly the insurance of John Boseman under two such group policies and such records reflect that any and all insurance and certificates in the name of John Boseman under such two group policies was cancelled and terminated upon midnight, March 31, 1932, when the entire policies lapsed and were cancelled. About March 31, 1932, my company actually entered upon its permanent records the cancellation of the in-

surance in the name of John Boseman under group policies G5039 and G5545. Group policies G5039 and G5545, each and both, lapsed and were cancelled on midnight, March 31, 1932. The agreement for the cancellation of these policies was made with the Gulf Oil Corporation of Pennsylvania and the application for the cancellation was received from that corporation, which application was made and accepted on or about March 15, 1932."

(The permanent record cards of the Connecticut General Life Insurance Company attached to the answers of the witness with reference to John Boseman's insurance under group policies G5039 and G5545 were offered in evidence and were as follows:

(a) As to group policy G5039:

"Name—Boseman, John (Negro).

G5039. Certificate No. 8349.

Policy Date—11/12/18.

Amt. of Ins.—$1000—Increased $250 per year thereafter until reached $2500 on 11/6/25.

Date of Birth—3/7/72. Age—47

Beneficiary—Mamie Boseman.

Relationship of Beneficiary—Wife.

Employment Begins—11/6/18. Ends—March 31, 1932.

Insurance Begins—11/6/19.

Department—Gulf Refining Company, Port Arthur."

(b) As to group policy G5545:

"Name—Boseman, John. Certificate No. 9100.
G5545. Maximum.
Policy Date—4/1/25.
Amount of Ins.—$1000 (Increased to $1500 11/1/29).
H.O.—9093.
Date of Birth—3/7/72. Age—53.
Beneficiary—Nancy Boseman.
Relationship—Mother.
How payable—Lump sum
Card No.—79. Ends March 31, 1932.
Department—Port Arthur Refinery)."

"I have been connected in the past and am now connected with the handling of the employees' insurance, the certificates evidencing such insurance, and the premiums under group policy known as G5039R, issued April 1, 1932, by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania and its subsidiary and/or affiliated companies. Since the issuance of this policy in 1932, I have had general supervision over and access to all of the records of Connecticut General Life Insurance Company pertaining to this policy. These permanent records pertain to the handling of the employees' insurance, the certificates evidencing such, the premium collections, premium refunds, as well as cancellation of employees' insurance under group policy G5039R. I am now familiar with and have the

custody of such permanent records, which show the insurance in force and certificates issued under group policy G5039R since April 1, 1932, as well as the premium collections upon said policy since such date, and the other matters hereinbefore stated as appearing in such records. These permanent records were properly and accurately kept in due course of business of the Connecticut General Life Insurance Company and truthfully reflect the facts as shown in such; they were compiled and kept and since compiled have been continuously used and accepted by my company, as well as the Gulf Oil Corporation of Pennsylvania, as a basis of determining the commencement of employees' insurance, the amount of such, the termination of such, and premiums paid by the Gulf Oil Corporation of Pennsylvania to my company upon such. All premiums which Connecticut General Life Insurance Company received on account of the insurance in force under this policy were received from the Gulf Oil Corporation of Pennsylvania, formerly the Gulf Oil Corporation, and these premiums were paid by such corporation to my company monthly in advance. These premiums were calculated upon the number of employees then insured thereunder on the respective amounts of such employee's insurance. I am familiar with the records pertaining to the issuance and cancellation of the insurance under group policy G5039R, as evidenced by certificate R23558

in the name of John Boseman, said party so named being a former employee at Port Arthur, Texas, of the Gulf Refining Company. The Connecticut General Life Insurance Company received notice that John Boseman had become insured under group policy G5039R from the Gulf Oil Corporation of Pennsylvania; this notice came from Pittsburgh, Pennsylvania, from the oil corporation, which sent all such notices, and the date of receipt was probably within a few weeks after April 1, 1932. This notice indicated that John Boseman had become insured under this policy on April 1, 1932, and that his insurance was in the amount of $4000.00. The Gulf Oil Corporation of Pennsylvania paid to the Connecticut General Life Insurance Company premiums upon the insurance in the name of John Boseman under policy G5039R for a period commencing April 1, 1932, until the date of the termination of such insurance. In conformity with such notice from the Gulf Oil Corporation of Pennsylvania the Connecticut General Life Insurance Company issued a certificate in the name of John Boseman under policy G5039R, which certificate was issued to the Gulf Oil Corporation of Pennsylvania in accordance with the terms of the policy. The number of the certificate was R23558, and was issued about May 1, 1932. The certificate was delivered to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, on

or about that date. Our records reflect that John Boseman first became insured under group policy G5039R on April 1, 1932.

"The Connecticut General Life Insurance Company received notice from the Gulf Oil Corporation of Pennsylvania that all insurance under group policy G5039R (as evidenced by certificate R23558) in the name of John Boseman had been cancelled; and this notice stated that this insurance had been cancelled on October 8, 1932; this notice in writing was in the form of an original registration card sent in by the Gulf Oil Corporation of Pennsylvania from the home office of that corporation in Pittsburgh, Pennsylvania, to the home office of the Connecticut General Life Insurance Company in Hartford, Connecticut, accompanied by a letter from Mr. H. J. Smith, Assistant Treasurer in charge of insurance for the Gulf Oil Corporation of Pennsylvania and affiliated and subsidiary companies. This registration card was destroyed in accordance with our usual practice after the information contained thereon had been transferred to a duplicate original registration card, which is our permanent record relating to this insurance. I am unable to attach the original registration card because it was destroyed shortly after it was received by the Connecticut General Life Insurance Company. This card gave the date upon which our records should show that such employee's insurance under

group policy G5039R had been cancelled, and the date so given was October 8, 1932. This notice was actually received on December 27, 1932, from the Gulf Oil Corporation of Pennsylvania as to the cancellation of John Boseman's insurance. A few days after December 27, 1932, the cancellation of the insurance in the name of John Boseman under group policy G5039R was entered upon the permanent records of the Connecticut General Life Insurance Company showing such cancellation effective as of October 8, 1932. I am attaching hereto the original record of the Connecticut General Life Insurance Company relating to the insurance of John Boseman under group policy G5039R, certificate R23558. The cancellation relating to the original amount of insurance, as well as all increases, was accordingly entered upon all insurance in the name of John Boseman under group policy G5039R. A premium charge on account of this insurance in the name of John Boseman for the months of October, November, and December, 1932, had prior to the receipt of such notice of cancellation from the Gulf Oil Corporation of Pennsylvania been made against such oil corporation and had been by it paid. This charge would have been sufficient to cover the cost of the insurance in the name of John Boseman to December, 1932, had the insurance not been cancelled prior to that time. The amount of this charge was $9.00. This overcharge or

unearned premium on account of the insurance of John Boseman under policy G5039R was refunded to the Gulf Oil Corporation of Pennsylvania by a credit memorandum dated December 31, 1932, and sent to the Gulf Oil Corporation to be applied against future premiums. The amount of this refund was $9.00 and was made to the Gulf Oil Corporation of Pennsylvania on December 31, 1932, by credit memorandum, which could be applied against future premiums under policy G-5039R. After the cancellation of the insurance under group policy G5039R on John Boseman as evidenced by his certificate R23558, the Connecticut General Life Insurance Company never received any notice from the Gulf Oil Corporation of Pennsylvania that John Boseman was again entitled to insurance under such group policy or that such employee was entitled to have his insurance reinstated under such group policy. My company never received, after October 8, 1932, from the Gulf Oil Corporation of Pennsylvania, or anyone else, any notice or request for my company to make any entry upon its records showing that John Boseman had again become insured under such group policy and never received any request to issue a new certificate of any amount or number in the name of such employee under such group policy, and the Connecticut General Life Insurance Company after that date never made any entry in its records to show new insurance or any reinstated insurance in the name of John Boseman under such policy, and never issued any new or additional certificate in any number or in any amount, and never reinstated

any certificate in the name of John Boseman or in his favor under group policy G5039R. The Connecticut General Life Insurance Company never retained any premium in any amount for any insurance in favor of or upon John Boseman under group policy G5039R for any period after the effective date of the cancellation of such employee's insurance as hereinbefore stated by me. I am attaching hereto a copy of the credit memorandum from my company to the Gulf Oil Corporation of Pennsylvania showing refund for unearned premium upon the insurance in the name of John Boseman under group policy G5039R as evidenced by certificate R23558."

The credit memorandum was offered in evidence and was as follows:

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

Group Department
Credit Memorandum

Hartford, Conn.,

Dec. 31, 1932

"To Gulf Oil Corporation of Pennsylvania
Pittsburgh, Penn.

Group Policy G5039R
Agency Home Office

Att. H. J. Smith, Asst. Treas.
"We have credited your account with terminations as follows: No. R23558. Name, Boseman, J. 15 Pt. Arthur Refry. Amount, 4000. Refund. Pro Rata Refund, 9.00.

"This memorandum is to be kept on file until the end of the settlement period when it should be checked up with the statement to verify its accuracy."

(Said credit memorandum contained credits with reference to various other insured employees whose insurance had been cancelled but who are not here involved.)

Mr. Tully's testimony continued:

"The Connecticut General Life Insurance Company has never had effective a certificate R23558 under group policy G5039R in the name of anyone other than John Boseman.

"The Connecticut General Life Insurance Company was notified that the employment of John Boseman with the Gulf Refining Company had terminated. This termination of employment was indicated by a notice of cancellation of insurance received from the Gulf Oil Corporation of Pennsylvania in the form of a letter dated December 22, 1932, from H. J. Smith, Assistant Treasurer, in charge of insurance for that corporation, which was accompanied by a registration card, and I am attaching hereto the duplicate original of this card and a photostatic copy of this letter."

The card and letter were offered in evidence by the defendant, which were as follows:

"Pittsburgh, Pa.
December 22, 1932
Received Dec. 27, 1932
Group Dept.

"Mr. W. Bjorn, Supt.,
Conn. Gen. Life Ins. Co.,
Hartford, Conn.

Dear Sir,

We are enclosing herewith two hundred and seven Cooperative registration cards for cancellation and one hundred and twenty one registration cards which represent additions, kindly issue certificates for same.

Yours very truly,
(signed) H. J. Smith,
Assistant Treasurer,
In Charge of Insurance."

The card was offered in evidence and showed as follows:

"John Boseman — Policy Date 4/1/32 — Policy G5039R—Amount of Insurance $4000.00—Certificate R23558—Insurance Ends 10/8/32."

Mr. Tully's testimony continued:

"The card as above shown indicated the cancellation of the insurance of John Boseman as of October 8, 1932, which was presumably the date of termination of employment. The Connecticut General Life Insurance Company received notice on December 27, 1932, that the employment of

John Boseman with the Gulf Refining Company had theretofore terminated; this notice came from the office building of the Gulf Oil Corporation of Pennsylvania, Frick Building Annex, Pittsburgh, Pennsylvania, and was sent by H. J. Smith, Assistant Treasurer, in charge of insurance for the Gulf Oil Corporation of Pennsylvania. After the date of cancellation of John Boseman's insurance under such policy, as was evidenced by certificate R23558, and after notice of cancellation of his employment as above shown, the Connecticut General Life Insurance Company never received any notice from anyone stating or informing such insurance company that John Boseman was again an employee, if he ever was such, of the Gulf Refining Company of Port Arthur, Texas, at any time or for any period thereafter. Neither the Connecticut General Life Insurance Company nor any representative of same made any inquiry, prior to the time that it entered upon its records that an employee was insured under group policy G5039R or G5039 or G5545, nor prior to the time that such company issued a certificate in the name of an employee under said policies, and each of them, and in no way concerned itself with whether or not the employer of such employee had taken any application, if there was ever such, from such employee, or had ever taken any payroll deduction order, if such was ever taken, from such employee who was to become insured. The

Connecticut General Life Insurance Company never authorized or permitted the Gulf Oil Corporation of Pennsylvania or any of its affiliated or any of its subsidiary companies, or any of the officers or employees of either of said companies, to act for or on behalf of the Connecticut General Life Insurance Company, or to in any way bind the Connecticut General Life Insurance Company with reference to the matters arising under or pertaining to group policy G5039R and G5039 and G5545, and the various employees' insurance thereunder. The permanent records of the Connecticut General Life Insurance Company relating to the insurance of John Boseman and its cancellation have been heretofore (and heretofore set out in full in this Bill of Exceptions) attached to my answers as requested. The photostatic copies attached (heretofore set out in full in this Bill of Exceptions) of the other records are true and correct reproductions of the originals. The original records from which such copies were taken were and are kept in the usual and customary course of business of the Connecticut General Life Insurance Company, and such are the permanent records of such company. It is not practicable to attach the original records instead of the photostatic copies where photostatic copies have been attached, for the reason that they relate to the insurance of employees and ex-employees other than John Boseman and are necessary for the proper

conduct of the business of Connecticut General Life Insurance Company. No employee of the Gulf Oil Corporation of Pennsylvania or of its subsidiary or affiliated companies was ever insured under policy G5039 and G5545 at the same time they were insured under group policy G5039R. The Connecticut General Life Insurance Company never received from John Boseman or anyone else in his behalf, an application for the conversion of his insurance under either group policy G5039, G5545 or G5039R. The amount of John Boseman's insurance under policy G5039R was $4,000.00 during all the period from April 1, 1932, to October 8, 1932, His insurance was never in excess of this amount and was, of course, cancelled as of October 8, 1932."

Thereupon, DR. JAMES W. LONG was called as a witness on behalf of the defendant, and after being duly sworn, testified as follows:

"I am a physician and surgeon. I am a graduate of an accredited medical school or college, holding the degree of Doctor of Medicine from such school. I have a license to practice my profession in the State of Texas. I have been engaged in the practice of medicine since 1926. I am employed by the Gulf Refining Company at Port Arthur, Texas, as plant physician and surgeon. My time is fully occupied with those duties so that I do not engage in the general practice.

Among my other duties, I am required to make examinations of applicants for employment, and the employees in regard to whether their physical condition is such that they can remain at work, or be hired from time to time. I examined a man named John Boseman the first time on June 24, 1931. I again examined this man on March 30, 1933. As to the occasion for that last examination, John Boseman brought a slip from the employment office on that day. The examination of March 30, 1933, showed that he weighed 136 pounds, had temperature of 98, pulse 80, blood pressure 140/80, vision in each eye was 20/20; he had a relaxed bulging right inguinal ring, which in my opinion predisposed him to a hernia. He had a scar in the left groin where he had had a hernia operation, he said, in Galveston, Texas, at the Sealy Hospital; the operation appeared to be a successful one and in a healed condition. John Boseman did not pass my examination for employment. The reason for same was because of the relaxed bulging right inguinal ring, which in my opinion constituted a weakness that might develop into a hernia. He did not go back to work after my examination; I did not tell him that in my opinion he was physically unable to work. The reason that he did not go back to work after my examination was that he refused to sign an acknowledgment stating that he did have this weakness and that it

had been explained to him. I explained to him that his condition was all right with the exception of this predisposition to hernia and that he would be predisposed to it upon violent exertion. I told him that if he signed this acknowledgment, or otherwise, he would pass. He did not sign it, that is the entry acknowledging his predisposition to hernia. This predisposition was on the right side. There was only one thing that I could do and that was to fail him on the examination. Had he signed it, I would have passed him."

Cross Examination by Mr. Howell.

"The acknowledgment with reference to hernia was one of the usual acknowledgments that I had the men to sign there when I found that condition; I did not have him sign it on my own authority, but on the authority of the plant manager. The instrument he was requested to sign does not specify anything except a hernia. It further states that he agreed to release any claim that he might have by reason of that. Unless he had executed that instrument I could not have passed him. Such instrument is the only one he would have had to have signed to Mr. Dobbs, the employment agent there, before Mr. Dobbs would have hired him. He would not have had to sign a complete release. This is the only instrument that I know anything about that he would have had to sign.

"He said that in 1926 he had had an operation on the left side, left groin—for hernia. He had that same hernia condition in 1931 when I examined him. I permitted him to continue work with it, as he was working at that time, those who were working, regardless of the disability found, if they were actively employed at the time of the first examination, and unless it was something very serious, like a very high blood pressure, or heart trouble, their jobs are not interfered with in any way."

MR. A. L. VANDEVENDER, then called as a witness for the defendant, and after being duly sworn, testified as follows:

Direct Examination by Mr. Cecil.

"I live at Port Arthur, Texas. My position is fire chief of the Gulf Refining Company at Port Arthur; I was assistant fire chief from May, 1925, up until a year and a half ago, when I became fire chief. I know a colored man named John Boseman. I became acquainted with him through the fact that he was working directly and indirectly under me; he was in that department, that is, the fire department, as a laborer. He worked under me from 1925 until he got laid off in 1932. He worked every day, eight hours a day until the NRA went into effect. He was doing miscellaneous labor, grass cutting, and cleaning up the pump house. I had occasion to see

and observe him two or three times a day. I had occasion to talk to him during the time he was working, if I had some orders to give him or something like that. From 1925 and 1926 up until 1932, during the time I was in charge of Boseman's work, he never complained directly to me of being sick or unable to do his work; he was a good worker. I saw him from day to day and he appeared to be able to do his work; he never complained."

Cross Examination by Mr. Howell.

"As to whether or not I have ever been issued a certificate under group policy G5039R by the Connecticut General Life Insurance Company, I have one—I could not say if it is in that particular form or not, I couldn't be positive whether it is like that or not. I never did pay much attention to that. Those policies were mailed directly to the men. They were mailed to them or received by them in the office or something like that. John Boseman did general labor work in the fire department. He has been there ever since I have been there. At the Gulf Refining Company negroes do that work, as it is not a class of work that the white laborers do. When he went back to work in 1933 he was not put in the fire department. I was the one that notified him that he was going to be laid off in 1932. I received those instructions from the head of-

fice there. They just told us to let off so many men and in doing such I took in consideration, to a certain extent, the length of service that the men had with the company and to a certain extent the ability of the man as a worker, and his physical capacity. John Boseman was one of the men that I laid off."

Witness excused.

MR. T. J. BABIN was then called as a witness in behalf of the defendant, and after being duly sworn, testified as follows:

Direct Examination by Mr. Cecil.

"I live at Port Arthur, Texas, and work for the Gulf Refining Company as assistant fire chief under Mr. Vandevender and have occupied that position since September 1, 1933. Before that time I was a truck driver in the fire department. I know the colored man named John Boseman. I got acquainted with him while working in the fire department. He was in the department there when I was employed there and I have been in the department around ten years. During that period of years we worked in the same department I had occasion to see this man frequently; I was doing shift work and I would see him in the mornings. I would see him from time to time or from day to day and see him about his work occasionally. As far as I know he did his work. He never complained to me at any time

of being sick or unable to do his work. As to whether or not he appeared a normal well man or a sick man—he seemed to be all right; he was able to do his work."

Cross Examination by Mr. Howell.

"I was not the foreman when he was working there. There was not any reason that I know of for him to complain to me about any sickness or actual illness that he might have. I talked to him just in the mornings, during working hours and afterwards. I would see him around there. He was a negro employee there in the same department where I was, and if I had something I wanted him to do, I would go to his foreman and tell the foreman that I wanted Boseman to come over there and do that. I gave Boseman no instructions about it and what conversation I had with him was generally just talking. He had for years, as much as I know of, been a good faithful worker there at the Gulf Refining Company. As far as I know, everybody respected him as a negro and for his ability to work. There was another negro in that department working there at that time. I don't know how long this other negro was there, but he was there when I went to work. He was let out at the same time as John Boseman.

"I had a certificate under this Connecticut General Life Insurance Company policy No.

G5039R, that one that I made application for some time in March, 1932, and it was delivered about May, 1932. That was a policy similar to this (indicating the certificate in the name of John Boseman, hereinbefore set forth in full). I don't know anything about John Boseman except that he was a good faithful worker."

DEFENDANT'S MOTION FOR INSTRUCTED VERDICT.

Be it further remembered that upon November 12, 1934, at the conclusion of the evidence in this case and after both sides had rested their case, and prior to the time any argument had been made to the jury in this cause and prior to the time the court had given any charge to the jury in this case, and at a seasonable time, the Connecticut General Life Insurance Company made its motion that the court instruct the jury to return a verdict in its favor in this cause, because of each and all of the following reasons and specifications then and there filed and presented to the court:

(a) "The undisputed evidence in this case shows and reveals that the plaintiff did not give notice in writing to the Connecticut General Life Insurance Company of any claim by him under said policy G5039R within sixty days after the termination of his employment with the Gulf Refining Company, but instead, that the first notice given by the plaintiff of such a claim to this

defendant was more than six months after the termination of his employment; said policy providing:

> 'And no claim for permanent total disability incurred by any employee during his period of employment shall be paid after termination of such employment unless such employee gave written notice of such disability to the Company (Connecticut General Life Insurance Company) during the said period of employment or within 60 days thereafter.'

(b) "This defendant in moving for such instructed verdict says that said provision for notice was valid under the laws of the State of Texas, but regardless of whether or not such was valid under the laws of the State of Texas, this defendant says that said policy G5039R and plaintiff's insurance thereunder were each and both subject to the laws of the State of Pennsylvania, and should be interpreted in accordance with the laws of such state, and that such provision was valid under the laws of the State of Pennsylvania and should be upheld in this court and the jury instructed to return a verdict for this defendant.

(c) "This defendant reqnests the court, still relying upon its request for an instructed verdict upon the principal amount involved in this case, to-wit, Four Thousand ($4,000.00) Dollars

as plaintiff's insurance, that if such relief should be refused to this defendant that nevertheless the jury should be instructed to return a verdict for this defendant and against the plaintiff as to any attorneys' fees and penalties in this case, because the undisputed evidence shows that the contract of insurance involved in this suit is a Pennsylvania contract, and should be interpreted under the laws of such state, and that no attorneys' fees and penalties can be collected upon a contract of insurance under the laws of the State of Pennsylvania, where such contract is executed, nor can such be collected under the laws of the State of Texas when the contract was executed in the State of Pennsylvania.

"Wherefore, this defendant requests the court to instruct the jury to return a verdict in its favor in this cause and against the plaintiff for all sums sought in this action, and in the event such motion is overruled, and still insisting upon such, this defendant requests the court to instruct the jury to return a verdict in its favor concerning the request for attorneys' fees and penalties in this cause."

And when said motion was presented and urged, the following took place:

The Court: "I am not going to take up any time of the jury while you are arguing it, because I can control that matter just as well after a verdict as before."

Be it further remembered that the court thereupon refused to rule upon said motion for instructed verdict by the defendant and each ground thereof as above set forth, but instead, specifically reserved decision upon same, and each ground of same; and thereafter the case was submitted to the jury and the verdict of the jury taken specifically subject to the future ruling and action of the court upon said defendant's motion for peremptory instruction and each ground thereof.

Motion for Findings of Fact and Declarations of Law.

Be it further remembered that upon November 12, 1934, immediately after the court had refused to rule upon defendant's motion for instructed verdict, and each ground thereof, as hereinbefore set forth, but had instead, reserved action upon same until after the verdict of the jury, the defendant, Connecticut General Life Insurance Company, then and there filed, presented and urged in open court, prior to any argument or charge to the jury, and at a seasonable time, its motion and request for findings of fact and declarations of law upon said matters and points upon which the court had refused to rule, and upon such questions contained in defendant's motion for instructed verdict, concerning which the court had specifically reserved action until after the verdict of the jury, said motion by the defendant being as follows:

"Comes now the defendant, Connecticut General Life Insurance Company, after the conclusion of all the evidence in this cause, and prior to the time the argument has been made to the jury and prior to the time that any charges have been given to the jury, and in open court, specifically subject to its motion for instructed verdict, heretofore made and presented in this cause, and now moves and requests the court for the following findings of fact upon the following matters, and conclusions or declarations of law upon the following matters:

"Findings of Fact.

1.

"That group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania and is subject to the interpretation in this court in accordance with the laws of the State of Pennsylvania.

2.

"That the plaintiff herein wholly failed and omitted to give any notice of any claim to the Connecticut General Life Insurance Company in writing within 60 days after the termination of his employment on October 8, 1932.

3.

"That the termination of plaintiff's employment, within the meaning and terms of group

policy G5039R and the certificate issued to plaintiff thereunder, occurred upon October 8, 1932.

"Conclusions or Declarations of Law.

1.

"That the provision in group policy G5039R and the certificate issued to the plaintiff thereunder, was and is valid under the laws of the State of Texas and failure to comply with such provision defeats a recovery by the plaintiff in this cause.

2.

"That group policy G5039R and plaintiff's insurance thereunder being subject to interpretation in accordance with the laws of the State of Pennsylvania, and the provision for notice within 60 days in said group policy G5039R, being valid under the laws of the State of Pennsylvania, is enforceable in this proceeding and plaintiff's failure to comply with such provision defeats a recovery by him in this cause.

3.

"That plaintiff's insurance under group policy G5039R, as well as policy G5039R, representing a Pennsylvania contract, entered into under and in accordance with the laws of that state, and attorneys' fees and penalties not being allowed by the laws of the State of Pennsylvania, the plain-

tiff herein is not entitled to recover any attorneys' fees and penalties in this cause.

"Wherefore, this defendant respectfully prays the court, subject to its motion for an instructed verdict, that the court make and file such findings of fact and conclusions or declarations of law."

Be it further remembered that when said motion for findings of fact and declarations of law as above set forth was duly filed, presented and urged to the court on November 12, 1934, immediately after the court reserved action upon defendant's motion for instructed verdict as hereinbefore set forth, and each ground thereof, and prior to any charge or argument to the jury, and at a seasonable time, the court then and there refused to rule upon such motion for findings of fact and declarations of law, but, instead, specifically reserved action upon said motion and each ground thereof, and subject to the future action of the court upon such motion for findings of fact and declarations of law, the case was submitted to the jury, and the verdict of the jury, subject to the future action of the court on said grounds reserved by the court, was thereafter accepted.

PLAINTIFF'S REQUESTED CHARGES.

Be it further remembered that prior to the time the court gave any charge to the jury, the plaintiff requested in writing to the court that the court charge the jury as follows:

"Comes now John Boseman, plaintiff in the above styled and numbered cause, and requests the court to instruct the jury, in connection with the definition of the terms 'total' and 'permanent total disability' as contained in the policy No. G5039R, that under such terms the insured employee need not be absolutely disabled from doing any labor or work but where he is so incapacitated that he is prevented from performing substantially to a material extent any and every part of the business pertaining to his occupation, or such disability as ordinary care in the preservation of his life and health would require him to desist from performing thereof.

"Plaintiff, John Boseman, requests the court to instruct the jury as a matter of law that the contract number G5039R, sued on herein, is a Texas contract and that the provision with reference to the sixty day notice contained therein is void and that under the undisputed facts in this case the plaintiff is entitled to recover twelve per cent penalty and reasonable attorney's fees not to exceed one thousand ($1,000.00) dollars.

"Wherefore, plaintiff respectfully requests the court to charge the jury in the above particulars."

And said charges having been presented to the court, the court refused the request of the plaintiff to so instruct the jury or to give to the jury either in-

struction contained in such request, and thereupon the plaintiff excepted.

CHARGE OF THE COURT.

"Now, gentlemen of the jury, in this case the plaintiff sues to recover upon a contract and policy of insurance insuring the plaintiff against permanent and total disability. There is a provision in the contract, I think, insuring against the contingency of death but that is not involved here, so that the only question for you gentlemen is the claim of total and permanent disability under this contract. It appears that there is no question or dispute between the parties about the contract or policy of insurance having continued in full force and effect up to and inclusive of, at least, the 8th day of October, 1932. Now, the policy provides for recovery in the event of total and permanent disability of the insured occurring on or before the 8th day of October, 1932. The policy or contract by its terms provides that any employee, and that means the plaintiff here, John Boseman, shall be deemed totally disabled within the meaning of the policy if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation. Now, the policy or contract further provides that if such total disability above defined begins before the age of sixty, and there is no question here but what this man is under the age of sixty, and presumably

during the life of such employee, will prevent the employee from pursuing any occupation for wages or profit, such employee shall be deemed permanently and totally disabled within the meaning of the policy or contract. Therefore, the sole question for the determination of you gentlemen is as to whether or not the plaintiff has established by a preponderance of the credible evidence that on or before the 8th day of October, 1932, he became or was on or before that date totally and permanently disabled. If the plaintiff has so established by a preponderance of the credible evidence, he should have a verdict; if he has not, he should not. Now, gentlemen, in this as in all other civil cases the burden of proof is upon the plaintiff to establish to your satisfaction and by a preponderance of the credible evidence his right to recover, that is, to show to your satisfaction by a preponderance of the credible evidence the fact that he became totally and permanently disabled on or before the 8th day of October, 1932, and remained that way. Now, by 'a preponderance of the credible evidence' is not necessarily or at all meant the greater number of witnesses but it means the greater weight and degree of testimony which you gentlemen find to be credible, that is, to be believed. You gentlemen are the exclusive judges of the credibility of the witnesses and of the weight to be given to their testimony and of the facts established from such credible evidence.

"Now, I shall probably have occasion in the course of this charge to make certain references to certain phases of the testimony but I caution you gentlemen that by such reference to the testimony I have no intention whatsoever of emphasizing either one side or the other's view of the testimony or what it means, and I certainly have no intention of invading the province of you gentlemen in determining what is the credible testimony in the case and from that the facts.

"Now, the plaintiff is not entitled to recover unless he became totally and permanently disabled while the contract of insurance was in force, that is, on or before the 8th day of October, 1932. The policy does not cover or insure against temporary disability even if such temporary disability is total in character. It does not cover permanent disability if such permanent disability is anything less than total and a man is totally disabled within the meaning of the contract sued upon if by reason of injuries or diseases he is continuously prevented from performing the duties of some gainful occupation for which he would otherwise be qualified by reason of education or training or experience.

"Now, gentlemen, as this whole claim revolves about that question of total and permanent disability I am going to repeat to you gentlemen that portion of the charge by saying that a man is totally disabled within the meaning of the contract

sued upon if by reason of injuries or disease he is continuously prevented from performing the duties of some gainful occupation for which he would otherwise be qualified by reason of his education or training or experience. Now, 'total disability' is deemed to be permanent when it is founded upon conditions which render it reasonably certain that such total disability, if any, will continue throughout the life of the person suffering from such disability. So, if the insured became ill or diseased or was injured while the policy or contract was in effect and thereby was totally disabled, nevertheless, you cannot find a verdict in his favor unless at some time before the policy expired or terminated, that is, on or before the 8th day of October, 1932, there was not only such a total disability, but that the same was of a type and character and the result of conditions in his body which made it then appear that in reasonable probability such total disability, if any, would continue throughout the remainder of his lifetime.

"Now, gentlemen, the fact that the insured is suffering from some disability or was during the life of the contract suffering from some disability short of total does not entitle him to recover. If he was suffering from some impairment which made it difficult for him to obtain a job or to engage in an occupation which would bring him a livelihood that does not come within

the terms of the policy or contract. The fact that he is suffering from some disability or disease or suffering so that it would put him in a condition which made it difficult for him to compete with others or handicapped him to some extent is not sufficient, if, notwithstanding the handicap, he might compete with others similarly situated or engage in an occupation which would give him a livelihood, because the jury in determining these things, under the terms of this policy, must consider humanity in the whole and by and large. The plaintiff cannot recover if it is merely shown that his condition is such that he cannot or would not compete with persons better equipped than he was, better educated, better mentally or physically endowed. If his condition was not such a disability which prevented him from competing with the average run of mankind in the class or walk of life to which he was fitted and to which he belonged, then it would not be total and permanent disability within the meaning of this contract. If, competing with the average run of humanity in the walk of life or in the station in life for which his equipment physically or mentally entitled him, if situated as he was and competing with the general run of humanity he could get and hold a job or make a livelihood, although he might suffer inconvenience or would have to put out more or greater effort than some other person had to do, that is not total disability unless the

effort he was compelled to put out or the suffering he had to endure or any inconvenience he suffered went to the extent of endangering or destroying his health. If it was such that the efforts which he made to obtain a job or hold it or engage in the carrying on of a livelihood had the effect of making it dangerous to his life or health, then, nevertheless, he would be permanently and totally disabled within the meaning of this contract. If the very efforts which he had to put out to hold a job and carry on a livelihood brought on a condition which would likely produce his death or necessarily injure his health, or if his condition was such that he could not make those efforts without inevitably bringing on that condition, then he is, nevertheless, under the law, totally disabled although he could do some work.

"Now, gentlemen, this proposition last enunciated must not be confused with the proposition that if you believe that on or before the 8th day of October, 1932, he was partially disabled and as time went on he became totally disabled, that you could allow him to recover because, of course, you could not. The whole undertaking of this contract, the whole obligation of it, the whole rights and duties of the parties to it are defined in it by the terms of the contract and are limited to a consideration of total and permanent disability, as those terms have been defined to you, and occurring on or before the 8th day of October, 1932,

because that is the limit of the contractual undertaking of this defendant and in this, as in any other case of contract, the parties to the contract are not bound except to the extent that they have undertaken to become bound and the only extent to which the defendant has undertaken to become bound under this contract is for the happening of that one contingency of total and permanent disability occurring on or before the 8th day of October, 1932. It is not sufficient for the plaintiff to show that there was something wrong with him in October of 1932, and that that condition commenced to become aggravated and to increase and after a while to become matured, whether it be in November or December of '32, or January of '33, or any period in '33, or any period subsequent to October 8, 1932. It must appear from the evidence and not from conjecture, gentlemen, that the plaintiff, by reason of either the injuries which have been elaborated in the evidence in this case, or the disease which has been more prominently referred to in the testimony of the various witnesses, had progressed to the extent of having totally and permanently disabled the plaintiff on or before that date.

"Now, gentlemen, just briefly and in conclusion, you will understand that this contract undertakes to pay for total and permanent disability occurring on or before the 8th day of October, 1932, and that the company has not contracted to pay

for after-occurring disease, that is, disease occurring after October 8, 1932, or against the after-occurring effects of disease. The disease or injury must have at that time, that is, on or before the 8th day of October, 1932, resulted in totally and permanently disabling the plaintiff. In other words, gentlemen, it is a condition existing on or before the 8th day of October, 1932, which the defendant insures against, that condition of total and permanent disability and only that occurring or existing on or before that date.

"Now, there is one other feature of this case as to which I consider there is a dearth of testimony. I suggested the fact to counsel for both sides at the conclusion of the testimony and neither side has seen fit to elaborate that feature of the testimony and that is perfectly proper. I do not make that reference by way of criticism of either counsel. But there is little evidence in the record upon it, but notwithstanding the dearth of evidence in the record upon the question, I deem it my duty to instruct you upon this phase of the case. As I recall the testimony, and I don't attempt to recollect it clearly, gentlemen, and I certainly didn't hear all of it, but as I recall the testimony, the main testimony, the main ground of claim of total and permanent disability results from a diabetic condition admittedly existing in this plaintiff, at least, some several months or possibly a year or more after the termination of his employ-

ment with this Gulf Refining Company. I don't recall that there was any positive testimony in the case of any doctor finding that condition prior to some date months subsequent to his termination of his employment in October, 1932, and I don't recall any testimony, at least positive in character, from either side as to any steps that they have taken in regard to the treatment of this condition of the plaintiff and I don't attempt to tell you gentlemen or speculate for your benefit as to what effects treatment might have upon his condition, if any. You have heard all the medical testimony upon that feature, but I instruct you gentlemen that in this case as in all other cases any party is bound to use ordinary care for his own protection and the preservation of his life. Now, by that I mean this. First of all I will say that 'ordinary care' is purely a legal term. It is an abstraction. It is a standard of conduct that the law fixes and it just means this: That it is that degree or standard of care which a person of ordinary care or prudence would exercise under the same or similar conditions. And so I come to this proposition: That if a person of ordinary care and prudence would take the curative steps which the medical witnesses have elaborated in their testimony as necessary to correct and alleviate a condition of this kind and that such procedural methods, such steps by way of the insertion or injection of insulin and the following of a proper course of diet would have the effect of

putting this man in a position where he could follow the substantial task of a workman or do the substantial task of any job for which he is qualified and fitted by training and education and experience, then he cannot by a failure to follow such steps just say that he will produce his own condition of total and permanent disability, because in this situation as in any other every man is bound to that degree or rule of reasonable care for the preservation and protection of his own life and well-being. He cannot speculate and fail to follow proper procedural methods that might alleviate that condition and say that he is going to make it a condition of total and permanent disability and then charge the defendant in this case with his own negligence; but upon the other hand if you gentlemen find that although he did take such steps as a person of ordinary care and prudence would have taken and yet that those steps would not be effective to restore him to a condition where he could perform the substantial task of a workman in such a way as to obtain employment and retain his employment after it is obtained, then the failure to take those steps would not enter into the picture because it does not make any difference whether he does or does not take those steps if, in the last analysis, they would not have the effect of putting him in a condition where he could work and compete with others in any livelihood or occupation for gain or profit, because, of course, it does not make

any difference how much care or caution a man uses if he meets the standard that is required of him by law if it does not have the effect of restoring his condition of health or body then it is just something that is not required of him because even though he takes the steps he would still be totally and permanently disabled, if you find that he is in such condition from the credible evidence in this case.

"Now, gentlemen, if, in the light of these instructions, you find from the credible evidence or a preponderance of the credible evidence that the plaintiff has shown to your satisfaction by such standard of proof his right to recover then you should find a verdict for the plaintiff. If you find that the plaintiff has not discharged that duty or burden resting upon him, then it would be your duty to find a verdict for the defendant. In any event, and in any form of finding the form of your verdict will be in this form: 'We, the jury, find in favor of the .....' indicating in the blank either 'plaintiff' or 'defendant' according to whom you find for and let that verdict be signed by one of your number as foreman. Your foreman you will select after you retire to consider of this case.

"Now, I want to advise you gentlemen before you have any opportunity for exceptions as to these instructions that I am knowingly and with aforethought expressly refraining from a charge upon

the question of notice in this case because I apprehend that I can control that question after verdict as well as I can before and I am just leaving that open so if you gentlemen have any exception to that failure or any requests in regard to it or any other exception to any other portion of the charge I will hear from you now."

Mr. Howell: "You say you will hear from me first, Your Honor?"

The Court: "All right."

Mr. Howell: "Do you want me to state them?"

The Court: "Yes."

Mr. Howell: "The plaintiff wants to take an exception to the charge of the court because the court fails to charge the jury with reference to the time that the policy was in force; that under the undisputed testimony here as applied to the conditions of the policy that the contract remained in force until and after March 30, 1933, because said contract provided, among other things, that if the employee leaves the employer's service except a temporary lay-off on account of work and enters the service of another corporation, firm or individual, even temporarily, his employment shall thereupon terminate. If any employee is temporarily laid off on account of lack of work and his insurance is cancelled his insurance may be reinstated upon his return to active service and his employment record will be considered

continuous from the original employment date notwithstanding the fact that he was not working in the meantime."

The Court: "I am mindful of that too."

Mr. Howell: "I just want to preserve my record, Your Honor."

The Court: "Yes, you preserve your rights, certainly, I know, but I see no occasion for a charge on that ground."

Mr. Howell: "And further because the contract provides that in the case any employee is absent from duty due to ill health or other disabling cause and not employed elsewhere during such absence he shall be considered as continuing in the employer's service unless and until the employer informs the company that his employment has terminated, as the undisputed facts in this case reflect that at all times from October 8, 1932, until the 30th day of March, 1933, that the plaintiff herein under the undisputed testimony was sick and in ill health under the terms of this policy. Plaintiff further makes the exception to the court's definition of total and permanent disability with reference to the failure of the court to charge the jury that if the employee, to-wit, the plaintiff in this case—I believe I filed a request which will account for that, though. That is all we have, Your Honor. We filed that in the form of a request and I believe that will take care of that exception."

The Court: "Well, I read that over when you handed it to me and there is nothing in that that I haven't given in my verbal instructions."

Mr. Howell: "All right."

(Counsel for defendant confers with the court.)

The Court: "Counsel for the defendant excepts to the court's failure to charge upon the question of notice. Any other exception?"

Mr. Cecil: "That is all."

Mr. Howell: "That is all."

The Court: "All right, gentlemen, you may retire to consider of your verdict."

Be it further remembered that after said charge to the jury the jury retired and after the consideration of its verdict thereafter returned into open court and filed its verdict on November 12, 1934, as follows:

"We, the jury, find a verdict in favor of the plaintiff.

Austin A. Kelly, Foreman,"

which verdict was accepted by the court and ordered filed subject to the future decision and determination of the court upon the points theretofore specifically reserved concerning defendant's motion for an instructed verdict and its motion for findings of fact and declarations of law.

Be it further remembered that thereafter the court continued open the October, 1934, regular term of court for all purposes concerning this case and

suit, including the determination by the court of the points reserved upon submitting the case to the jury.

MOTION OF DEFENDANT FOR JUDGMENT NON OBSTANTE VEREDICTO.

Be it further remembered that the defendant did upon November 16, 1934, file and present, after proper notice, its motion for judgment in open court in this suit in its favor, which motion was as follows:

"Comes now the defendant, Connecticut General Life Insurance Company, after the jury has returned its verdict in the cause above captioned and moves the court that it enter a judgment in favor of this defendant in this cause, in spite of the findings and verdict of such jury, for the following good and sufficient reasons:

1.

The undisputed evidence in this case shows that the plaintiff was not totally and permanently disabled within the meaning and terms of group policy G5039R and the certificate issued to him thereunder on or prior to October 8, 1932, the date upon which his insurance under such policy was cancelled and terminated.

2.

That the plaintiff herein has failed to show by a preponderance of the evidence that he was totally and permanently disabled on or prior to October 8, 1932, within the meaning and terms of

group policy G5039R, and the certificate issued to him thereunder, his said insurance under such policy having lapsed and terminated on said date, to-wit, October 8, 1932.

3.

The undisputed evidence in this cause showing that group policy G5039R contained the following provision for notice, to-wit:

> 'No claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment, unless such employee gave written notice of such disability to the company during the said period of employment or within 60 days thereafter.'

And the further undisputed evidence revealing that the plaintiff did not give such notice within such 60 days, but instead, did not give same until more than 6 months after the termination of his employment on October 8, 1932; and said provision being valid under the laws of the State of Texas and under such laws of such nature as would defeat plaintiff's claim, this defendant should be given a judgment.

4.

This defendant says it should be given a judgment because of such provision for notice quoted in the preceding paragraph, and the failure of the plaintiff to comply therewith, because re-

gardless of whether or not said provision for notice is valid under the laws of the State of Texas, that group policy G5039R, and plaintiff's insurance thereunder, was and is a Pennsylvania contract and is entitled to be interpreted under the laws of Pennsylvania and said provision for notice is valid under the laws of Pennsylvania and if not complied with, and plaintiff having failed to comply with same in this case, defeats a claim of the plaintiff, and, therefore, this defendant is entitled to a judgment.

5.

This defendant says, still insisting upon a judgment in its favor, and concerning all amounts requested in this suit, for the reasons hereinbefore set forth, that regardless of such, it is entitled to a judgment in its favor in this cause upon plaintiff's request for attorneys' fees and penalties for the following reasons, each and all:

(a) That group policy G5039R, and plaintiff's insurance thereunder was and is a Pennsylvania contract, and subject to the laws of that state, which laws should be applied to this controversy in this court, and under the laws of such state attorneys' fees and penalties are not permitted in a suit of this character in favor of the plaintiff or his attorney, to be collected from the defendant, and, therefore, this defendant in any event is

entitled to a judgment in its favor concerning the request for attorneys' fees and penalties.

(b) Article 4736 of the Revised Civil Statutes of Texas allows only the holder of such policy of insurance to collect attorneys' fees and penalties, and the plaintiff herein was not the holder of such policy, but instead, said policy was held by the Gulf Oil Corporation of Pennsylvania, who is not a party to this suit, and, therefore, plaintiff is not entitled to recover same, but defendant is entitled to a judgment as to such.

(c) Because Article 4736 of the Revised Civil Statutes of Texas applied only to life, health and accident insurance, and this is not a suit pertaining to life, health and accident insurance, but instead, is a suit pertaining to group insurance, and furthermore, is a suit pertaining to disability insurance and not life, health and accident insurance.

(d) Because no issue has been submitted to the jury on attorneys' fees and there is no finding by the jury as to any amount of attorneys' fees in this case.

Wherefore, this defendant respectfully prays this court that judgment be entered in its favor as to all amounts sued for by the plaintiff herein for the reasons hereinbefore set forth pertaining to such, and in the alternative, and subject to its

prayer, for a judgment in its favor upon the whole controversy, it respectfully prays for a judgment in its favor as to any request by the plaintiff for attorneys' fees and penalties."

And said motion for judgment having been duly presented to the court, the court thereupon took same under advisement and withheld decision upon same, pending the court's determination of the points reserved concerning defendant's motion for an instructed verdict and its motion for findings of fact and declarations of law.

PLAINTIFF'S MOTION FOR JUDGMENT.

Be it further remembered that upon November 15, 1934, plaintiff filed and presented, after due notice to the court in open court, its motion for judgment as follows:

"Comes now the plaintiff in the above styled and numbered cause and makes application to this Honorable Court to enter judgment in favor of the plaintiff, upon the verdict of the jury and the law applicable thereto, in the principal amount of the policy, to-wit, four thousand ($4,000.00) dollars, together with twelve (12%) per cent penalty and attorney's fees in the amount of one thousand ($1,000.00) dollars.

Wherefore, plaintiff respectfully petitions this Honorable Court to enter judgment in his favor

and against the Connecticut General Life Insurance Company, in the amount of five thousand four hundred eighty ($5,480.00) dollars."

And that upon the presentation of such motion by the plaintiff, the court thereupon took same under advisement and reserved action upon the same pending the court's determination of the points reserved in defendant's motion for instructed verdict and its motion for findings of fact and declarations of law.

Be it further remembered that the defendant continued to urge to the court, and did not waive, its motion for instructed verdict upon the points reserved, its motion for findings of fact and declarations of law, and its motion for judgment *non obstante veredicto* continuously; and that the plaintiff continued to urge his motion for judgment thereafter continuously, and did not waive same; and all motions, after due and proper notice, came on for final action and determination by the court on December 26, 1935, the court not having theretofore determined same, and thereupon the court took the following action, in open court:

(a) On December 26, 1935, the court, after due consideration overruled and refused to sustain the defendant's motion for instructed verdict, and each and every ground thereof, the court having theretofore reserved action upon such motion and each ground thereof, and said action on the part of the court having been taken on the date stated, prior to decision or rendition

of judgment in the case, and the court having overruled and refused each and every ground and point reserved as above set forth, the defendant then and there in open court excepted, prior to rendition of judgment, to the action of the court on each and all of said questions and was allowed its exceptions.

(b) On December 26, 1935, prior to rendition of judgment, after the overruling of defendant's motion for instructed verdict and each ground thereof, which had been by the court reserved, the court thereupon in open court acted upon the defendant's motion for findings of fact and declarations of law filed on November 12, 1934, decision and action upon same having been reserved by the court when same were filed and presented, and in connection with such request for findings of fact and declarations of law filed by the defendant, the following action was had by the court, in open court, prior to decision or rendition of judgment, and the following exceptions were allowed as shown:

REFUSAL OF COURT TO FIND FACTS AND MAKE DECLARATIONS OF LAW.

"(1) The court refuses to find 'that group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania, and is subject to interpretation in this court in accordance with the laws of Pennsylvania.'

The court does further refuse to make the following declarations of law requested by the defendant:

(1) That group policy G5039R and the plaintiff's insurance thereunder were and are subject to interpretation in accordance with the laws of the State of Pennsylvania; and that the failure of the plaintiff to give notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment defeats a recovery by him in this cause; but instead, this court declares the law to the contrary.

(2) This court further refuses to declare as a law, as requested by the defendant, that attorneys' fees and penalties cannot be collected by the plaintiff in this suit because the contract involved is a Pennsylvania contract; but, instead, the court declares to the contrary that the contract was a Texas contract and that attorneys' fees and penalties can be collected by the plaintiff under Article 4736 of the Revised Civil Statutes of Texas.

To which action of the court in refusing to make the findings of fact as above shown, and in refusing to declare the law as stated above, the defendant in open court, upon such court's refusal on December 26, 1935, prior to rendition of judgment in this cause, excepted to each and every refusal of the court concerning such findings, and declara-

tions, and was allowed its exceptions, which are ordered filed."

Be it further remembered that the court did at the same time take the following action and allow the exception as shown:

"However, in connection with the defendant's request for specific findings of fact and declarations of law, the court does make and file, in open court prior to rendition of judgment, in response to such requests, and in response to defendant's motion for peremptory instruction, and in response to defendant's motion for judgment *non obstante veredicto*, the following findings of fact and declarations of law:

FINDINGS OF FACT.

(1) That group policy G5039R, and plaintiff's insurance thereunder, was and is a contract of the State of Texas, and is subject to interpretation in this court in accordance with the laws of the State of Texas.

(2) That the plaintiff herein wholly failed and omitted to give any notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment, which occurred on October 8, 1932.

(3) That the provision found in group contract G5039R, and the certificate issued to John

Boseman thereunder, which required notice of a claim for total and permanent disability under same within sixty days after termination of employment of John Boseman, was valid under the laws of Pennsylvania.

(4) However, the fact that such provision for notice was valid under the laws of the State of Pennsylvania does not defeat this claim and cause, since same is to be interpreted under and in accordance with the laws of the State of Texas.

(5) That no attorneys' fees or penalties in a case of this character could be collected under the laws of the State of Pennsylvania.

(6) However, attorneys' fees and penalties can be collected in this suit by the plaintiff, since it is to be interpreted and tried in accordance with the laws of the State of Texas.

CONCLUSIONS OF LAW.

(1) That the provision for notice of a claim within sixty days by the plaintiff was invalid under the laws of the State of Texas and therefore not enforceable in this suit.

(2) That Article 4736 of the Revised Civil Statutes of Texas entitled the plaintiff to attorneys' fees and penalties in this suit and is applicable to this cause.

To the findings set forth in subdivisions 1, 4 and 6, under 'Findings of Fact' above and the dec-

larations of law, each and all, declared by the court, the defendant then and there in open court prior to rendition of judgment excepted to each and all of same and was allowed its exceptions."

Be it further remembered that said findings of fact above shown were not made at the request of the plaintiff.

Be it further remembered that after the foregoing action had been taken by the court upon defendant's motion for an instructed verdict, its motion for findings of fact and declarations of law, the court thereupon on December 26, 1935, overruled and refused defendant's motion for judgment *non obstante veredicto* filed in this cause on November 15, 1934, and overruled and refused each ground of same prior to the rendition of judgment in this cause, and the defendant then and there in open court excepted, prior to the rendition of judgment, to the action of the court on each and all of said grounds contained in defendant's motion for judgment *non obstante veredicto* and was allowed its exceptions.

Be it further remembered that thereafter on December 26, 1935, the court did grant the plaintiff's motion for judgment filed herein on November 15, 1934, to which action of the court the defendant then and there in open court exeepted and was allowed its exceptions.

Be it further remembered that the court did thereafter on December 26, 1935, decide said points reserved as hereinbefore shown in favor of the plaintiff

and did render and sign judgment in favor of the plaintiff therein, and the defendant then and there in open court excepted to the action of the court and further excepted to each finding of fact and declaration of law stated by the court in said judgment and was allowed its exceptions.

Be it further remembered that a regular term of the United States District Court in and for the Eastern District of Texas, Beaumont Division, came on and was duly opened on the 21st day of October, A. D. 1935, the above and foregoing motions filed by the plaintiff and defendant in said cause having not theretofore been determined by the court; that said regular term of court of the United States District Court for the Eastern District of Texas, Beaumont Division, having been convened in October, 1935, as provided by law, and upon the date so provided continued open without adjournment until after November 16, 1935, and that while said regular term of court was so open the following order was made, signed and entered by the regular judge then presiding:

"*In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. At Law No.* 1468.

OCTOBER REGULAR TERM, 1935.

"The regular term of this court now in session is continued open for all purposes and will remain in regular session, open for all business, from this date continuously until March 2, 1936.

"Done this the 13th day of November, A. D. 1935.

(Signed) RANDOLPH BRYANT,
Judge Presiding."

Be it further remembered that during said extension of the regular term of the United States District Court in and for the Eastern District of Texas, the court did, on December 26, 1935, render and enter judgment therein and did sign, render and duly enter prior to the termination of the regular term of court, commencing in October, 1935, the following order:

"*In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. At Law No.* 1468.

"Upon application made to me in the above styled and numbered cause by the defendant, Connecticut General Life Insurance Company, it is hereby ordered that the term of court in and for the Eastern District of Texas, Beaumont Division, at which judgment was rendered on December 26, 1935, in favor of the plaintiff in the suit above captioned, be and the same is hereby continued open until March 2, 1936, for the purpose of allowing the parties to prepare, file and settle their bills of exception; for the further purpose that orders may be filed and entered showing the overruling of defendant's motion for peremptory instructions, and showing the defendant's exception

to the action of the court in overruling same; for the further purpose that order may be prepared, filed and entered showing the overruling by the court of defendant's motion for judgment *non obstante veredicto* and the exceptions taken by the defendant to such action of the court; for the further purpose that orders may be prepared, filed and entered showing and allowing the exceptions of the defendant to the granting by the court of plaintiff's motion for judgment; for the further purpose that orders may be prepared, filed and entered showing and allowing defendant's exceptions to the judgment entered for the plaintiff, as well as exceptions to the findings of fact and declarations of law therein; for the further purpose that orders may be prepared, filed and entered showing the overruling by the court of the defendant's requests for findings of fact and declarations of law, and showing the defendant's exceptions thereto; for the further purpose that the court may make and file findings of fact and declarations of law, if it so desires; and for the further purpose that exceptions may be made, urged and filed by the defendant to such findings of fact and declarations of law as and when prepared and filed by the court.

"Entered this the 26th day of December, A. D. 1935.

(Signed) RANDOLPH BRYANT,
Judge Presiding."

"*In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. At Law No.* 1468.

"It appearing to the court that the entire charge of this court given in the suit above captioned is necessary for better understanding of the errors assigned by the defendant in said cause:

"It is, therefore, ordered that the entire charge of this court be included in the bill of exceptions.

"Done this 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
Trial Judge Presiding."

AGREEMENT OF COUNSEL AS TO BILL OF EXCEPTIONS.

It is agreed by and between counsel for the parties hereto that the above and foregoing is a full, true, complete and correct statement of all the material evidence introduced in said cause, reduced to narrative form; and that the foregoing contains the offers of counsel, the objections thereto, the rulings of the court thereon; the request of the defendant for peremptory instruction in its favor at the close of the evidence, the order of the court overruling the same, the defendant's exception thereto; the requests of plaintiff for charges, the order of the court refusing same and the plaintiff's exception thereto; the request of the defendant for findings of fact and declarations of law, the order of the court refusing same, and the defendant's exception thereto; the findings of fact and declara-

tions of law made by the court, and the defendant's exception thereto; the charge of the court, the defendant's objection and exception thereto; the motion of the defendant for judgment *non obstante veredicto*, the order of the court overruling same and the defendant's exception thereto; the plaintiff's motion for judgment, the order of the court granting same, and the defendant's exception thereto; the order of the court extending the term of court at which the judgment was entered until March 2, 1936, all in the case of John Boseman vs. Connecticut General Life Insurance Company, At Law No. 1468.

It is further agreed that same shall constitute the bill of exceptions on this appeal, that same has been corrected to meet all suggestions and objections on behalf of the plaintiff.

HOWELL & HOWELL,
Attorneys for Plaintiff.

ORGAIN, CARROLL & BELL,
Attorneys for Defendant.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Conneticut General Life Insurance Company. At Law No. 1468.

ORDER APPROVING BILL OF EXCEPTIONS.

It appearing that the foregoing bill of exceptions has been duly submitted to the counsel for John Boseman, and by such counsel approved, and all objections of such counsel to such bill of exceptions, prior

to approval, have been corrected, and that there are no further objections to the form or contents of said bill of exceptions; and the court having found the same to be a full, true, complete, condensed, narrative statement of all the evidence in the case; and I do further certify that the foregoing contains all the offers of counsel, objections thereto, and rulings of the court thereon, with the exception of counsel thereto; the request of the defendant for peremptory instruction in its favor at the close of all the evidence, the order of the court overruling the same, the exceptions of the defendant to such; the motion of the defendant for findings of fact and declarations of law, the order of the court overruling same, the exceptions of the defendant thereto; the entire charge of the court, with the objections and exceptions made by the plaintiff and defendant thereto, and the order of the court overruling the same; the findings of fact and declarations of law made by the court, the exceptions of the defendant thereto; the motion of the defendant for judgment in its favor *non obstante veredicto,* the order of the court overruling same, and each ground of same, and the defendant's exceptions thereto; the motion of the plaintiff for judgment, the orders of the court granting same, and the defendant's exceptions thereto; the order of the court extending the term in which judgment was entered until March 2, 1936; the order of the court requiring the charge of the court to be included in said bill of exceptions in full; as well as all the other proceedings had in the trial of the case of

John Boseman vs. Connecticut General Life Insurance Company, At Law No. 1468.

And it appearing to the court that said bill of exceptions was duly filed and presented within the time granted by the orders extending the term of the court, and in the manner required by the rules of this court, and that all the evidence, as well as all the other proceedings, included in said bill was and is necessary to present clearly the questions of law involved and the rulings to which exceptions were reserved; and that such evidence, being all the evidence, was set forth therein in condensed and narrative form, save as a proper understanding of the questions presented, required that parts of it be set forth otherwise; and it further appearing to the court that there are no local rules of court that in anywise affect the question presented that are not included in said bill; all of which so certified is ordered to be filed and become a part of the record this the 25th day of February, A. D. 1936, the foregoing bill of exceptions being allowed and approved.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. Bill of Exceptions. Filed February 25, 1936. Helen Mathews, Clerk of United States District Court. Della Ashley, Deputy.

Order of November 13, 1935, Keeping Open Term of Court.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

October Regular Term, 1935.

The regular term of this court now in session is continued open for all purposes and will remain in regular session, open for all business, from this date continuously until March 2, 1936.

Done this the 13th day of November, A. D. 1935.

Randolph Bryant,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. Order Extending Term of Court. Filed November 13, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Order of December 26, 1935, Continuing Open Term of Court.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Upon application made to me in the above styled and numbered cause by the defendant, Connecticut General Life Insurance Company, it is hereby ordered that the term of court in and for the Eastern District of Texas, Beaumont Division, at which judgment was rendered on December 26, 1935, in favor of the plaintiff in the suit above captioned, be and the same is hereby continued open until March 2, 1936, for the purpose of allowing the parties to prepare, file and settle their bills of exception; for the further purpose that orders may be filed and entered showing the overruling of defendant's motion for peremptory instructions, and showing the defendant's exception to the action of the court in overruling same; for the further purpose that order may be prepared, filed and entered showing the overruling by the court of defendant's motion for judgment *non obstante veredicto* and the exceptions taken by the defendant to such action of the court; for the further purpose that orders may be prepared, filed and entered showing and allowing the exceptions of the defendant

to the granting by the court of plaintiff's motion for judgment; for the further purpose that orders may be prepared, filed and entered showing and allowing defendant's exceptions to the judgment entered for the plaintiff, as well as exceptions to the findings of fact and declarations of law therein; for the further purpose that orders may be prepared, filed and entered showing the overruling by the court of the defendant's requests for findings of fact and declarations of law, and showing the defendant's exceptions thereto; for the further purpose that the court may make and file findings of fact and declarations of law, if it so desires; and for the further purpose that exceptions may be made, urged and filed by the defendant to such findings of fact and declarations of law as and when prepared and filed by the court.

Entered this the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. Order Keeping Open Court. Filed December 26, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Petition for Appeal and Order Allowing Same.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

To the Honorable Randolph Bryant, Judge Presiding:

Now comes Connecticut General Life Insurance Company, defendant in the above numbered and entitled cause, and shows to Your Honor that it desires an appeal from the decree entered against it in the above cause on December 27, 1935, as by record is manifest, and as a predicate for such appeal it has filed assignments of error specifying grounds of appeal, and the Connecticut General Life Insurance Company therefore prays that Your Honor allow its appeal to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, for the correction of the errors assigned and manifest of record, and that an order be entered fixing such bond conditioned as required by law as may be requisite in the premises; that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana,

under the rules of such court in such case made and provided.

Wherefore, the said Connecticut General Life Insurance Company respectfully prays that its appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, and your petitioner further prays that the proper order relating to the required security to be required of it be made, and that upon tender of a supersedeas appeal bond for appeal in proper form and in proper amount that the same be approved.

DUFF & CECIL,
ORGAIN, CARROLL & BELL,
Attorneys for the Defendant, Connecticut General Life Insurance Company.

MAJOR T. BELL,
Of Counsel.

ORDER ALLOWING APPEAL.

The foregoing application being duly presented with defendant's assignments of error, the appeal is allowed and it is ordered that the amount of the appeal bond for the superseding of the judgment pending the appeal and determination thereof, is hereby fixed at the sum of eight thousand ($8,000.00) dollars, said bond to be executed by at least two sureties if the sureties are individuals, and if the bond be executed by a corporate surety company authorized to do business in the State of Texas, then that one surety be sufficient.

It is further ordered that upon the execution and approval of said bond said appeal shall operate as a supersedeas of said judgment until the final judgment on appeal herein.

Dated this the 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
United States District Judge in and for the Eastern District of Texas, at Beaumont, Texas.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court, Eastern District of Texas. Plaintiff's Petition for Appeal and Order Allowing Appeal. Filed February 25, 1936. Helen Mathews, District Clerk U. S. Court, Eastern District of Texas. By Della Ashley, Deputy.

Assignments of Error, With Prayer for Reversal.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

VS.

Connecticut General Life Insurance Company.

ASSIGNMENTS OF ERROR.

Comes now the defendant, Connecticut General Life Insurance Company, in the above entitled and numbered cause, and files the following assignments of error in

connection with its petition for appeal, upon which assignments of error it will rely upon appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the final judgment rendered and entered herein on the 27th day of December, A. D. 1935:

1.

The policy upon which the plaintiff sued in this suit for total and permanent disability benefits being conditioned:

> "And no claim for permanent total disability incurred by an employee during his period of employment shall be paid after termination of such employment unless such employee gave written notice of such disability to the company (Connecticut General Life Insurance Company) during the said period of employment or within 60 days thereafter";

and the whole and undisputed evidence having shown that the plaintiff did not give notice in writing, or otherwise, to the defendant of this, or any other claim by him for total and permanent disability benefits under said policy within 60 days after the termination of his employment with the Gulf Refining Company (his employer), but instead, that the first notice given by the plaintiff of such a claim for total and permanent disability benefits to this defendant was more than six months after the termination of his employment with such company; and the whole and undisputed evidence having shown that the contract upon which the plain-

tiff sued was a contract made in Pennsylvania, triable and subject to the laws of Pennsylvania and to be interpreted thereunder, and that said provision for notice was valid under the laws of said State of Pennsylvania and would defeat a suit by the plaintiff if not complied with; and the defendant having moved for an instructed verdict at the conclusion of all the evidence, and before any argument or charge to the jury, based upon said ground, it was error for the Honorable Trial Court to refuse to sustain the defendant's motion for an instructed verdict, based upon the ground above set forth, and defendant excepted to the action of the court.

2.

The Honorable Trial Court having submitted the case to the jury for a general verdict, subject to the determination by the court thereafter of the question of whether or not plaintiff's suit should be tried and determined in accordance with the laws of Pennsylvania or the laws of Texas, and the defendant, upon the reservation of such question by the court, having made due request of the court for the following finding of fact upon said reserved question:

> "That group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania and is subject to the interpretation of this court in accordance with the laws of the State of Pennsylvania";

and the whole and undisputed evidence having shown that group policy G5039R and plaintiff's insurance thereunder was a contract of the State of Pennsylvania and subject to the interpretation of the court under the laws of such state, and if so interpreted the plaintiff could not recover since he had failed to comply with the provision of said contract for notice of a claim within sixty days, which was valid under the laws of Pennsylvania, it was error for the court to refuse to make such finding of fact and to overrule this defendant's request for such finding.

3.

The Honorable Court having reserved and withheld the decision upon the question of whether or not group contract G5039R, and plaintiff's insurance thereunder, was subject to the laws of Pennsylvania and to be determined according to such, and immediately thereafter upon such reserved point, the defendant having requested the following declaration of law by the court:

> "That group policy G5039R and plaintiff's insurance thereunder being subject to interpretation in accordance with the laws of the State of Pennsylvania and the provision for notice within sixty days in said group policy G5039R being valid under the laws of the State of Pennsylvania, is enforcible in this proceeding, and plaintiff's failure to comply with such provision defeats a recovery by him in this cause."

The whole and undisputed evidence having shown such to be true, the contract involved being made in Pennsylvania, it was error for the court to overrule this defendant's request for such declaration of law, and refuse to make such declaration.

4.

The Honorable Trial Court, having submitted the case to the jury for its verdict, to be accepted subject to his later determination as to the question of whether or not group contract G5039R and plaintiff's insurance thereunder, was governed by the laws of the State of Pennsylvania, and the whole and undisputed evidence having shown that this was a contract made, entered into and subject to the laws of Pennsylvania and to be interpreted in accordance therewith; and the whole and undisputed evidence having shown that said policy contained a provision stating that no claim for total permanent disability thereunder, such as asserted by the plaintiff herein, by any employee as occurring during his period of employment should be paid after termination of such employment, unless such employee, plaintiff herein, gave written notice of such disability to the Connecticut General Life Insurance Company during the said period of employment with the Gulf Refining Company (his employer), or within sixty days thereafter; and the whole and undisputed evidence having shown that the plaintiff gave no such notice, but admitted that such notice was not given until more than six months after the termination of such employ-

ment, and the whole and undisputed evidence having shown that the failure to comply with the said provision for notice, under the laws of Pennsylvania, would defeat this suit, and this defendant having urged such defense, and all of said facts having been established by the whole and undisputed evidence, and after the verdict of the jury this defendant having filed motion for judgment *non obstante veredicto* based upon the ground that this suit was to be determined under the laws of the State of Pennsylvania and that the plaintiff had failed to comply with said provision in said contract for notice, which defeated his said suit, and said motion being true and established by the whole and undisputed evidence, the trial court committed error in overruling said motion of this defendant based on the ground above set forth, and entering judgment for the plaintiff and against this defendant.

5.

The Honorable Trial Court committed error in making and filing the following finding of fact, to which finding the defendant entered its exception:

> "That group policy G5039R, and the plaintiff's insurance thereunder, was and is a contract of the State of Texas and is subject to interpretation in this court in accordance with the laws of the State of Texas."

The whole and undisputed evidence having shown that plaintiff was suing upon group contract G5039R,

same was made, executed and delivered in Pennsylvania and specifically made subject to the laws of that state, it was error for the trial court to so find in face of the whole and undisputed evidence to the contrary.

6.

It was error for the Honorable Trial Court to make the following finding of fact:

> "However, the fact that such provision for notice was valid under the laws of the State of Pennsylvania does not defeat this claim and cause, since same is to be interpreted under and in accordance with the laws of the State of Texas."

The whole and undisputed evidence having shown that the contract sued upon by plaintiff was a Pennsylvania contract, it was error for the court to find to the contrary.

7.

The Honorable Trial Court committed error in overruling defendant's motion for a peremptory instruction presented at the conclusion of all the evidence and prior to any charge or argument to the jury as to attorneys' fees and penalties requested by the plaintiff, which motion was as follows:

> "This defendant requests the court, still relying upon its request for an instructed verdict, upon the principal amount involved in this cause, to-wit, four thousand ($4,000.00) dollars, as plaintiff's

insurance, that if such relief should be refused to this defendant that nevertheless, the jury should be instructed to return a verdict for this defendant and against the plaintiff as to attorneys' fees and penalties in this cause, because the undisputed evidence shows that the contract of insurance involved in this suit is a Pennsylvania contract, should be interpreted under the laws of such state, and that no attorneys' fees and penalties can be collected upon a contract of insurance under the laws of the State of Pennsylvania, where such contract is executed, nor can such be collected under the laws of the State of Texas when the contract was executed in the State of Pennsylvania."

Such facts being established by the whole and undisputed evidence and all rights of the plaintiff being subject to determination, according to the whole and undisputed evidence, by the laws of the State of Pennsylvania, it was error for the trial court to refuse to instruct the jury to return a verdict for the defendant as to all attorneys' fees and penalties requested, the laws of Pennsylvania allowing no attorneys' fees or penalties as requested by plaintiff.

8.

The Honorable Trial Court having withheld determination of the question of whether or not plaintiff's right to attorneys' fees and penalties in this case should be determined by the laws of the State of Pennsylvania

or the laws of the State of Texas, and submitted the case to the jury subject to such determination, and the defendant prior to such submission to the jury having requested the following declaration of law by the court;

> "That plaintiff's insurance under group policy G5039R, as well as policy G5039R, representing a Pennsylvania contract entered into in accordance with the laws of that state, and attorneys' fees and penalties not being allowed by the laws of the State of Pennsylvania, the plaintiff herein is not entitled to recover any attorneys' fees and penalties in this cause."

The whole and undisputed evidence having shown that this was a Pennsylvania contract and the rights derived therefrom to be determined by the laws of that state, the court committed error in refusing to make such declaration of law upon such point reserved.

9.

The Honorable Trial Court erred in rendering judgment for the plaintiff for attorneys' fees and penalties and rendering judgment against the defendant for such, and overruling the following ground of this defendant's motion for judgment *non obstante veredicto*:

> "That group policy G5039R, and plaintiff's insurance thereunder, was and is a Pennsylvania contract, and subject to the laws of that state, which laws should be applied to this controversy in this court and under the laws of such state attorneys'

fees and penalties are not permitted in a suit of this character in favor of the plaintiff or his attorneys to be collected from the defendant and therefore this defendant in any event is entitled to a judgment in its favor concerning the request for attorneys' fees and penalties."

The whole and undisputed evidence having shown that plaintiff's suit was founded upon a Pennsylvania contract and subject to the laws of that state and no attorneys' fees and penalties were allowed under the laws of Pennsylvania.

10.

The Honorable Trial Court committed error in making the following finding of fact upon the reserved point of whether or not attorneys' fees and penalties could be collected:

"However, attorneys' fees and penalties can be collected in this suit by the plaintiff, since it is to be interpreted and tried in accordance with the laws of the State of Texas."

The whole and undisputed evidence being that this was a Pennsylvania contract and subject to the laws of that state and determinable in accordance therewith.

11.

The Honorable Trial Court committed error in making the following declaration of law, to which the

defendant excepted, upon the reserved point of whether attorneys' fees and penalties could be collected:

> "That Article 4736 of the Revised Civil Statutes of Texas entitle the plaintiff to attorneys' fees and penalties in this suit and is applicable to this cause."

The whole and undisputed evidence having shown that the case should be tried in accordance with the laws of the State of Pennsylvania, the contract having been made in that state, the court committed error.

12.

The Honorable Trial Court committed error in overruling the following ground of defendant's motion for judgment, *non obstante veredicto*, as to attorneys' fees and penalties requested by the plaintiff:

> "Article 4736 of the Revised Civil Statutes of Texas allows only the holder of such policy of insurance to collect attorneys' fees and penalties and plaintiff herein is not the holder of such policy, but instead, said policy was held by the Gulf Oil Corporation of Pennsylvania, who is not a party to this suit, and, therefore, plaintiff is not entitled to recover same, but defendant is entitled to a judgment as to such."

This being a suit upon a policy of group insurance issued by the defendant to the Gulf Oil Corporation of Pennsylvania, and the Gulf Oil Corporation of Pennsylvania being the named assured and plain-

tiff herein being insured thereunder only in accordance with the terms and provisions of group contract G5039R, in which the named assured was the Gulf Oil Corporation of Pennsylvania, the whole and undisputed evidence having established such, the court committed error, to which action of the court this defendant excepted.

13.

The Honorable Trial Court committed error in overruling and refusing to sustain this defendant's motion for judgment, *non obstante veredicto*, as to attorneys' fees and penalties based upon the following ground:

> "Because Article 4736 of the Revised Civil Statutes of Texas applied only to life, health and accident insurance and this is not a suit pertaining to life, health and accident insurance, but instead, is a suit pertaining to group insurance, and furthermore, is a suit pertaining to disability insurance and not life, health and accident insurance."

Such being established by the whole and undisputed evidence, the court committed error in overruling such ground and entering judgment in favor of the plaintiff and against this defendant for attorneys' fees and penalties, to which action of the court this defendant excepted.

14.

The verdict of the jury in favor of the plaintiff was against the whole and uncontroverted testimony,

which whole and uncontroverted testimony established that group contract G5039R and plaintiff's rights thereunder were controlled by the laws of Pennsylvania, and that such contract contained a provision requiring notice of a claim to this defendant by the plaintiff within sixty days after termination of his employment, which provision was not complied with by the plaintiff and which provision was valid under the laws of Pennsylvania, and error was committed by the trial court in accepting said verdict and rendering judgment thereon.

15.

The Honorable Trial Court committed error in rendering judgment for the plaintiff as the whole and undisputed evidence showed that plaintiff's rights under such contract involved was triable and to be determined by the laws of Pennsylvania, and that the plaintiff had violated a valid provision of said contract requiring notice of his claim within sixty days of the termination of his employment and, therefore, was not entitled to recover.

16.

The Honorable Trial Court committed error in rendering judgment for the plaintiff for attorneys' fees and penalties, since the whole and undisputed evidence showed that the contract involved was a Pennsylvania contract and to be determined in accordance with the laws of that state, and that the laws of that state did not permit attorneys' fees and penalties.

17.

The Honorable Trial Court committed error in making a finding in the judgment rendered on November 26, 1935, to the effect "policy G5039R, upon which the plaintiff's suit was predicated, was applied for and performed in Texas and the final acts necessary to make the policy effective were performed in Texas, and that policy G5039R and certificate R23558, issued him thereunder, is a Texas contract;" because the whole and undisputed evidence showed that the contract was applied for and became effective in the State of Pennsylvania and was not a Texas contract.

Wherefore, the appellant prays that said decree be reversed and that the Honorable Circuit Court render judgment for the defendant in said matter for all amounts sought by the plaintiff, both the principal amount and attorneys' fees and penalties; or in the alternative, that said judgment be reversed and the United States District Court for the Eastern District of Texas, sitting at Beaumont, be directed to enter judgment in favor of the defendant for all amounts sought by the plaintiff, both the principal amount and attorneys' fees and penalties, or in the alternative, that the court be directed to enter judgment for the defendant for the attorneys' fees and penalties; further, in the alternative, if the court is not directed to enter judgment for the defendant, then the court be directed to dismiss plaintiff's suit as to all amounts, or in the alternative, as to attorneys' fees and penalties; and

that all costs be taxed against the appellee, John Boseman.

Respectfully submitted,

DUFF & CECIL,
ORGAIN, CARROLL & BELL,
Attorneys for Appellant, Connecticut General Life Insurance Company.

MAJOR T. BELL,
Of Counsel.

Presented this 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court for the Eastern District of Texas. Assignments of Error. Filed February 25, 1936. Helen Mathews, U. S. District Clerk, Eastern District of Texas. By Della Ashley, Deputy.

Supersedeas Bond.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

VS.

Connecticut General Life Insurance Company.

SUPERSEDEAS BOND.

Know All Men by These Presents:

That Connecticut General Life Insurance Company, a corporation, as principal, and the undersigned, an

incorporated surety company with a permit to do business in the State of Texas, as surety, are held and firmly bound unto John Boseman in the full and just sum of eight thousand ($8,000.00) dollars, to be paid to the said John Boseman, his executors, administrators, successors and assigns; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, administrators, successors and assigns.

By these presents, signed and sealed with our seals this the 20th day of February, A. D. 1936.

Whereas, lately at a term of the United States District Court in the suit pending in said court between John Boseman, plaintiff, vs. Connecticut General Life Insurance Company, defendant, cause At Law 1468, on the docket of said court, a final judgment was rendered in favor of the plaintiff and against the defendant in the sum of five thousand four hundred eighty ($5,480.00) dollars, and said judgment was entered on December 27, 1935, and four thousand ($4,000.00) dollars of said judgment drawing interest at the rate of six per cent (6%) per annum from April 1, 1934, until the date of said judgment; and thereafter, the entire amount of said judgment drawing interest at the rate of six per cent (6%) per annum from the date of entry thereof; and,

Whereas, the defendant, Connecticut General Life Insurance Company, has obtained allowance of an appeal to reverse said judgment in the aforesaid suit dated and entered as aforesaid;

Now, therefore, the condition of the above obligation is such that if the above named Connecticut General Life Insurance Company shall prosecute its appeal to effect and pay off and discharge said judgment with interest and answer all damages and costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, we have signed and sealed this instrument this the 20th day of February, A. D. 1936.

Connecticut General Life Insurance Company,
By John M. Laird,
Its Vice-President,
(Seal) Principal.

Hartford Accident & Indemnity Company,
By E. H. Cheney,
Its Attorney in Fact,
(Seal) Surety.

The above and foregoing bond being this day presented to me is approved and ordered filed, this the 25th day of February, A. D. 1936, as a supersedeas.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court, Eastern District of Texas.

Supersedeas Bond. Filed February 25, 1936. Helen Mathews, Clerk United States District Court, Eastern District of Texas. By Della Ashley, Deputy.

Citation on Appeal.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

CITATION ON APPEAL.

The United States of America:

To John Boseman, Plaintiff in the Above Cause, or His Attorneys of Record, Greetings:

You are hereby notified that in the above cause, wherein Connecticut General Life Insurance Company is defendant and John Boseman is plaintiff, At Law No. 1468, on the docket of the United States District Court in and for the Eastern District of Texas, at Beaumont, an appeal has been allowed the defendant, Connecticut General Life Insurance Company, therein to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

You are hereby cited and admonished to be and appear at said court at New Orleans, Louisiana, thirty (30) days after date of this citation to show cause, if any there be, why the order and decree appealed from

should not be corrected and speedy justice done to parties in that behalf.

Witness the Honorable Randolph Bryant, Judge Presiding, in the United States District Court in and for the Eastern District of Texas, Beaumont Division, at Beaumont, in said cause this the 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
Judge Presiding, United States District Court in and for the Eastern District of Texas, at Beaumont.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court, Eastern District of Texas. Citation on Appeal. Filed February 27, 1936. Helen Mathews, District Clerk, United States District Court. By Della Ashley, Deputy.

Waiver of Service of Citation.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

VS.

Connecticut General Life Insurance Company.

WAIVER OF SERVICE.

Now comes John Boseman, appellee in the above cause, by his attorneys of record, and acknowledges receipt of citation on appeal in the above cause and

hereby accepts service thereof, and enter their appearance in said cause to the next regular term of the Honorable United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, and waive all further service and notice of said appeal.

HOWELL & HOWELL,
Attorneys for Appellee,
John Boseman.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court, Eastern District of Texas. Waiver of Service of Citation on Appeal. Filed February 27, 1936. Helen Mathews, U. S. District Clerk, Eastern District of Texas. By Della Ashley, Deputy.

Praecipe.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

PRAECIPE FOR TRANSCRIPT.

To the Honorable Helen Mathews, Clerk of the District Court of the United States for the Eastern District of Texas:

Now comes Connecticut General Life Insurance Company, appellant in the above cause, and prepares

and files this its praecipe indicating the portion of the record it desires to be incorporated into the transcript in the appeal herein allowed, as follows:

1. Caption.

2. Original Petition of Plaintiff.

3. Petition for Removal by Connecticut General Life Insurance Company.

4. Notice of Intention to Remove and Service Thereof.

5. Removal Bond and Approval Thereof.

6. Order of Removal.

7. Plaintiff's Trial Amendment to Original Petition.

8. Defendant's Second Amended Original Answer.

9. Verdict of the Jury.

9-A. Additional Caption.

10. Findings of Fact and Declarations of Law.

11. Order Granting Plaintiff's Motion for Judgment.

12. Order Overruling Defendant's Motion for Judgment.

13. Judgment.

14. Bill of Exceptions.

15. Order of November 13, 1935, Keeping Open Term of Court.

16. Order of December 26, 1935, Continuing Open Term of Court for This Case Until March 2, 1936.

17. Petition for Appeal and Order Allowing Same.

18. Assignments of Error, With Prayer for Reversal.

19. Supersedeas Bond.

20. Citation on Appeal.

21. Waiver of Service of Citation on Appeal.

22. Praecipe.

23. Clerk's Certificate.

DUFF & CECIL,
ORGAIN, CARROLL & BELL,
Attorneys for Defendant, Connecticut General Life Insurance Company.

MAJOR T. BELL,
Of Counsel.

The within praecipe has been submitted to the attorneys for John Boseman, plaintiff, who are Messrs. Howell & Howell. They have examined said praecipe and they hereby agree that a record of the instruments and proceedings as above set forth shall constitute the record on appeal to the United States Circuit Court for the Fifth Circuit, and indicate they do not desire any further instruments included in the record; and do hereby waive service of praecipe.

HOWELL & HOWELL,
Attorneys for Plaintiff, John Boseman.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court, Eastern District of Texas. Praecipe for Transcript. Filed February 28, 1936. Helen Mathews, District Clerk United States District Court. By Della Ashley, Deputy.

Clerk's Certificate.

I, Helen Mathews, Clerk of the District Court of the United States for the Eastern District of Texas, at Beaumont, in the Fifth Circuit, and district aforesaid, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, assignments of error and all the proceedings had in Cause No. 1468 at Law, wherein John Boseman is plaintiff and Connecticut General Life Insurance Company is defendant, prepared in accordance with the praecipe for transcript as fully as the same remain on file and of record in my office at Beaumont; and that same constitutes the return of the original citation on appeal and waiver of service thereof, annexed hereto.

Witness my hand officially and the seal of said court at Beaumont, in said district, this the 12th day of March, A. D. 1936.

Helen Mathews,
Clerk.

(Seal)

By Ruth B. Head,
Chief Deputy.

[fol. 234] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of June 2nd, 1936

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

versus

JOHN BOSEMAN

On this day this cause was called, and, after argument by Major T. Bell, Esq., for appellant, and Leon P. Howell, Esq., for appellee, was submitted to the Court.

[fol. 235] OPINION OF THE COURT—Filed July 14th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellant,

versus

JOHN BOSEMAN, Appellee

Appeal from the District Court of the United States for the Eastern District of Texas

(July 14, 1936)

Before Foster, Sibley and Hutcheson, Circuit Judges

SIBLEY, Circuit Judge:

The sole question presented by this appeal is whether the contract of insurance against total and permanent disability on which John Boseman recovered is governed by

the law of Texas. The trial court so held, awarding judgment for attorney's fees and damages as fixed by a Texas statute, and denying validity to a provision of the insurance contract that no claim would be paid after termination of Boseman's employment unless written notice were [fol. 236] given of it within sixty days after the employment ceased. The court found, and it is conceded, that the provision about notice is valid under the law of Pennsylvania which the insurer contends is controlling, and that no attorney's fees or damages would be recoverable under that law. We put aside the question about statutory damages and attorney's fees, because that about notice will control the case.

The contract is one of group insurance for employes. The insurer is a corporation of Connecticut, with its home office at Hartford. It had during the time here involved a permit to do business in Texas, but had never qualified by making the required deposits, had no office or agents in Texas, and had written no insurance there of any kind since 1917. The employer who negotiated for the insurance is Gulf Oil Corporation of Pennsylvania, having its home office at Pittsburgh. Boseman was an employe of Gulf Refining Company which is an affiliate or subsidiary of Gulf Oil Corporation and which was carrying on business at Port Arthur, Texas. Prior to 1932, Gulf Oil Corporation, for its employes and those of its subsidiaries and affiliates, had arranged group insurance with this same insurer under contracts known as Policies G5039 and G5545, and Boseman was insured under the latter. On March 15th, 1932, at Pittsburgh, Gulf Oil Corporation in behalf of itself, its subsidiaries and affiliate companies, by a writing there delivered to an agent of the insurer requested that Policies G5039 and G5545 be cancelled as of March 31, 1932, and that a new Policy G5039R be issued in Pittsburgh and to be governed by the laws of Pennsylvania, under which employes shall be insured who have complied with its terms. Under date of March 7th, 1932, Boseman had at Port Arthur signed and delivered to an officer of Gulf Refining Company an application for insurance under the new policy to be effective April 1st, agreeing to be bound by the rules governing it, and authorizing the de- [fol. 237] duction from his pay each month of the proper amount in advance for premium and agreeing to take the

new insurance in lieu of the old. This paper was not sent to the insurer, but remained in the employer's files. The new policy was issued under date of April 1st, 1932, and delivered at Pittsburgh to Gulf Oil Corporation. Reciting that it is issued in accordance with the application and cancels and substitutes the former policies, it states that "Connecticut General Life Insurance Company, Hartford, Connecticut, (hereinafter called the Company), specifies in this policy the terms and conditions under which it insures certain employes of Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies (hereinafter called the employer)." The policy proceeds to define the risks covered and the employes who are eligible for insurance and includes those who on March 31, 1932, were insured under the former Policy G5545 and hence included Boseman. Other employes are required to have completed a stated period of service. "An employe may elect insurance under this policy by completing any form of payroll deduction order approved by the employer. Each employe electing the insurance before becoming eligible will be insured automatically on the day he becomes eligible." In some stated cases evidence of insurability satisfactory to the company is required, but Boseman was not included in them. The period of the policy and the premium requirements are: "This policy is issued for a term of one year from April 1st, 1932, 12:01 A. M. Standard Time at the employer's address, in consideration of the application of the employer, the payment of the binding premium of $1.00, and the payment of such further premiums as are provided herein." "On the effective date of this policy and on each annual policy renewal date thereafter an average annual premium rate will be established" in a stated way. "Premiums are due and payable monthly [fol. 238] in advance at the home office of the Company", determined as above. "If any premium is not paid when due this policy shall cease except that 31 days of grace will be allowed without interest for the payment of all premiums other than the binding premium." The employer at the beginning of each month is to notify the Company of new employes taking insurance and of those whose insurance has terminated, and premium adjustments are to be made accordingly. "Upon termination of employment of any insured employe his insurance shall be can-

celled as follows except as hereinafter provided: 1. Employes who upon termination of employment request a refund of the unearned premium shall have insurance cancelled upon termination of employment." Boseman's employment ceased Oct. 8, 1932, and he received a proportionate refund for that month. "The policy and the application of the employer, copy of which is attached to and made a part of this policy, and the applications of the employes, if any, shall constitute the contract between the parties." "This contract is issued and delivered in the City of Pittsburgh in the Commonwealth of Pennsylvania, and is governed by the laws of that Commonwealth." Other details of the insurance are omitted as not here material. The policy, however, contains this: "The Company will issue to the employer for each insured employe an individual certificate. The certificate will in no way void any of the terms and conditions outlined in the policy, but will show the insurance protection to which the employe is entitled, to whom payable, and the conversion privilege." The Gulf Refining Company notified Gulf Oil Corporation of Boseman's application for insurance and Gulf Oil Corporation notified the insurer, and about May 1st the insurer issued a certificate effective April 1st which states that it is issued pursuant to the above quoted provision of the policy and certifies that the insurer "has is- [fol. 239] sued a policy of cooperative group life insurance to Gulf Oil Corporation and/or subsidiary or affiliated companies, executed and delivered in the Commonwealth of Pennsylvania, and that subject to its terms and conditions John Boseman, an employe, is insured for $4,000." Many but not all of the terms and conditions of the policy are annexed to the certificate and among them this: "No claim for permanent disability incurred by any employe during employment shall be paid after the termination of such employment unless the employe gave written notice of disability to the Company during the period of employment or within sixty days thereafter." This certificate was delivered to Gulf Oil Corporation in Pittsburgh and was sent by it to Port Arthur to Boseman. Boseman lived and worked at Port Arthur and the deductions from his pay were made there. Neither Boseman nor any other employe had any direct communication with the insurer previous to making claim, but only with the

employer. Both the officers of the employer and of the insurer testified that the former were not in any manner authorized nor did they attempt to act for the insurer, but acted for and in behalf of the employees touching the insurance. The Gulf Oil Corporation paid the insurer the required premiums at Pittsburgh or Hartford, and reimbursed itself in part only by the pay deductions of the employes.

Group insurance is of recent origin. It is usually cheaper than individual insurance probably because the risks are in a measure self-selecting and because the expense to the insurer of writing it and administering it is slight. That taken by employers for employes usually has a feature of benevolence or paternalism, sometimes being paid for entirely by the employer, sometimes in part as in this case. There are four parties interested in the contract: The insurer, the employer, the employe and his beneficiary. The [fol. 240] certificate issued in this case to the insured employe is clearly not the contract of insurance for it says so on its face. The Commission of Appeals of Texas so held of a similar one in Wann vs. Mutual Life Ins. Co., 41 S. W. (2) 50. We looked to a certificate, however, to aid a construction of the policy in Metropolitan Life Ins. Co. vs. Foster, 67 Fed. (2) 264. Since the certificate is not the contract nor at all necessary to the existence of the insurance, (All-State Life Ins. Co. vs. Tillman, 226 Ala. 245, 146 So. 39), the time and place of its delivery are unimportant to the present inquiry. The insurance as to any employe is perfect so soon as eligibility and his election concur, the policy being in force. Notice to the insurer is not a prerequisite, though it is to be given in due course. Boseman was eligible from the beginning, and elected to take the insurance before the policy was issued by signing in advance the necessary pay deduction order to his employer. His insurance waited only on the issuance of the policy and became effective instantly after and because of that act. The insurer did not authorize the employer or its agents to solicit Boseman in Texas to become insured. According to the evidence the employer initiated the whole matter, obtaining from Boseman and doubtless from many other employes authority to proceed, and thereafter obtained the insurance on its own and their behalf. Even as to employes who did not consent in advance the reasonable

conclusion is that the employer's action was taken for them in anticipation of their ratification, which occurred on their signing a pay deduction order. Employes' group insurance partly or wholly paid for by the employer resembles to some extent insurance by a mutual benefit association, which is obtained by joining the association. Although the insurance of the particular new member arises only on his becoming such, his insurance is usually governed not by the law of the place where he lives and receives his certificate but of that under which the association operates. [fol. 241] The federal courts have been inclined to treat such insurance not as diverse contracts under the particular laws of the several States where members reside but as under the laws of the home State and thus uniform. Royal Arcanum vs. Green, 237 U. S. 532; Modern Woodmen of America vs. Mixer, 267 U. S. 544; Minnesota Commercial Men's Association vs. Benn, 261 U. S. 140. Many courts hold that employes' group insurance whether the employer pays all or only a part of the premium cost is a contract between the insurer and the employer for the benefit of the employes and their named beneficiaries, and that the latter sue the insurer only as third persons for whose benefit the contract was made. This view is emphasized by the right of the employer to cancel the insurance and release the insurer, or by this result occurring from the employer's failure to pay the agreed aggregate premium. See Carpenter vs. Chicago, 21 Ind. App. 88; Gallagher vs. Simmons Hardware Co., 258 S. W. 16; Duval vs. Metropolitan Life Ins. Co., 82 N. H. 543; 50 A. L. R. 1276; Leach vs. Metropolitan Life Ins. Co., 124 Kansas 584, 261 P. 603; State of New York vs. Amringe, 266 N. Y. 277, 194 N. E. 754; Connecticut General Life Ins. Co. vs. Speer, (Ark.), 48 S. W. (2) 553; Equitable Life Ins. Co. vs. Hall, (Ky.), 69 S. W. (2) 977; Kingsland vs. Missouri State Life Ins. Co., (Mo.), 66 S. W. (2) 959; Davis vs. Metropolitan Life Ins. Co., (Tenn.), 32 S. W. (2d) 1034; Thompson vs. Pacific Mills, 141 S. C. 303, 55 A. L. R. 1237. Several of the cases cited strongly assert that the employer is not to be regarded as the agent of the insurer soliciting insurance in the employe's State, but as the representative of the employe in making and maintaining the insurance. We are persuaded that this is the true view, although a different conclusion is maintained by a Texas Court of Civil Appeals

in Connecticut General Life Ins. Co. vs. Lockwood, 84 S. W. (2d) 245, and Connecticut General Life Ins. Co. vs. Dent, 84 S. W. (2d) 250. There may arise cases in which [fol. 242] group insurance is made a cover by an insurance company for soliciting business in a State in which it is not qualified to do business, but this not such. In Palmetto Fire Ins. Co. vs. Conn., 272 U. S. 295, 9 Fed. (2d) 203, and in Chrysler Sales Corporation vs. Smith, 9 Fed. (2d) 266; Chrysler Sales Corporation vs. Spencer, 9 Fed. (2d) 674; there was no true group insurance but a wholesale plan to insure automobiles sold at retail—each insurance was distinct with its own policy and for its own premium paid in the purchase price by the buyer of the car. Whether we look at the case before us in its general aspect or at the special circumstances under which Boseman became insured we are of opinion that the transaction of insurance occurred in Pennsylvania and not in Texas. If employes in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania, and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do not control it. Algeyer vs. State of Louisiana, 165 U. S. 578; New York vs. Amringe, 266 N. Y. 277, 194 N. E. 754; Hartford Accident & Indemnity Co. vs. Delta and Pine Land Co., 292 U. S. 143.

The conclusion that the laws of Pennsylvania ought to control is much strengthened by the express agreement to that effect of all parties both in the application for the policy, in the policy itself, and in the certificate accepted by Boseman. Parties in contracting may adopt as part of their contract the laws of a State other than their own if not contrary to the law or public policy of the State where the contract is made and to be performed. Mutual Life Ins. Co. vs. Hill, 193 U. S. 551. Let it be remembered that this policy was applied for, the first premium was paid, and the policy was delivered in Pennsylvania, and that ordinarily fixes the place where an insurance contract is considered to be made. Mutual Life Ins. Co. vs. Hill, supra. The term of the policy runs from April 1st to April 1st, irrespective of when any employe may come in under it. [fol. 243] The $1.00 binding premium and the agreed average premium must be paid by the employer in full to initiate and to sustain the policy irrespective of whether any

or all employes have paid their contribution to the employer. The insurer did not go out of Pittsburgh to make this arrangement, and all notices or payments necessary to carry it on are done there. The employe transacts nothing with his insurer in Texas in making and sustaining his insurance, but all his transactions are with the employer and through him with the insurer in Pittsburgh. The business is substantially done in Pittsburgh and the parties may without imputation of evading the law of any other State agree that they are dealing uniformly under the law of Pennsylvania. Boseman in applying to his employer for participation in the policy and by accepting his certificate expressly agreed to the provision requiring notice of claim and it is a material part of the insurance contract. The law of Pennsylvania sustains it, while the law of Texas, as the parties concede, makes a notice period of less than ninety days unreasonable and void.* The law which will sustain rather than that which will defeat a plain and fair agreement ought where possible to be applied. Boseman did not give notice of claim even within the ninety days mentioned in the Texas statute, but more than six months after his employment ceased and after he received the rebate of premium which marked the cessation of his insurance. He is not entitled in the face of his contract and of the law under which he agreed that it was being [fol. 244] made to assert such claim. The judgment is reversed, and the case remanded for further proceedings not inconsistent herewith.

Judgment Reversed.

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* See Art. 5546, Texas Revised Statutes of 1925, which does not mention insurance but is held applicable to it in Grand Lodge vs. Hill, 277 S. W. 797; Southern Travelers Ins. Assn. vs. Cole, 45 S. W. (2d) 675; Southern Travelers Assn. vs. Masterson, 48 S. W. (2) 771.

[fol. 245] JUDGMENT

Extract from the Minutes of July 14th, 1936

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

versus

JOHN BOSEMAN

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellee, John Boseman, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 254] ORDER DENYING REHEARING

Extract from the Minutes of August 27th, 1936

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

versus

JOHN BOSEMAN

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 255] MOTION AND ORDER STAYING MANDATE—Filed September 8th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT, AT NEW ORLEANS

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellant,

versus

JOHN BOSEMAN, Appellee

Appealed from the District Court of the United States for the Eastern District of Texas, Beaumont Division

APPLICATION FOR STAY OF MANDATE

To the Honorable Justices Sibley, Hutcheson and Foster of the United States Circuit Court of Appeals, Fifth Circuit:

Now comes John Boseman, appellee in the above styled and numbered cause, and respectfully requests the court to grant a stay of the decree of this Honorable Court entered on the 14th day of July, 1936, and to withhold the issuance of its mandate pending the filing of and action on petition for certiorari to the Supreme Court of the United States in this cause.

[fol. 256] The question involved on this appeal to this Honorable Court is whether the Texas or Pennsylvania laws were applicable and govern a certain contract of insurance covering appellee.. Upon a trial of the cause in the United States District Court for the Eastern District of Texas, the trial court held that the Texas laws were applicable, and on the appeal from said judgment this Honorable Court entered its decree reversing the trial court, holding that the laws of Pennsylvania govern the contract and ordering the trial court to enter judgment not inconsistent with the opinion of this court, and thereafter this Honorable Court on the 27th day of August, 1936, overruled appellee's motion for rehearing of said cause.

It is the intention of appellee to petition the Supreme Court of the United States for certiorari upon the grounds that this Honorable Court has erroneously decided the law applicable to the case and that such opinion is in conflict with a former decision by the Supreme Court of the United States rendered in the case of Palmetto Fire Insurance Company vs. Conn, 71 L. D. 243, and the decision of the Circuit Court of Appeals in the same case.

Therefore, an order of stay of the decree of this Honorable Court and the withholding of the issuance of the mandate should be granted in order that this question may be properly presented to and determined by the Supreme Court of the United States.

Wherefore, premises considered, appellee, John Boseman, respectfully prays that this Honorable Court enter its order withholding the issuance of the mandate and staying its decree rendered in this cause until disposition of the petition for writ of certiorari and, if the petition is granted, until the case is decided.

[fol. 257] (Signed) Leon P. Howell, Attorney for Appellee.

A copy of this application received this the 1st day of September, A. D. 1936, and further service thereof is hereby waived.

(Signed) Major T. Bell, Attorney for Appellant.

[fol. 258] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellant,

versus

JOHN BOSEMAN, Appellee

On Consideration of the Application of the Appellee in the above numbered and entitled cause for stay of the mandate of this court therein, to enable Appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at Atlanta, Ga., this 4 day of September, 1936.

(Signed) Sam'l H. Sibley, United States Circuit Judge.

[fol. 259] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 234 to 258 next preceding this certificate contain full, true and complete copies of all the

pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8077, wherein Connecticut General Life Insurance Company is appellant and John Boseman is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 233 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 28th day of October, A. D., 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 21, 1936

The petition herein for a writ of cretiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.